# City of Cocoa

*65 Stone Street*
*Cocoa, FL 32922*

## Meeting Agenda - Final

**Tuesday, June 6, 2023**

**6:00 PM**

**Cocoa City Council Chambers**

## City Council

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

## II. APPROVAL OF AGENDA AND MINUTES:

AGENDA:

**II.1** 23-341 Approve the Agenda for the Regular meeting of June 6, 2023, as presented or with amendments.

***Attachments:*** 06-06-2023 Short Agenda ADA.pdf

MINUTES:

**II.2(a)** 23-348 Approve the Minutes of the Regular meeting of April 11, 2023, as written or with amendments.

***Attachments:*** 04-11-2023 Minutes.pdf

**II.2(b)** 23-349 Approve the Minutes of the Regular meeting of April 25, 2023, as written or with amendments.

***Attachments:*** 04-25-2023 Minutes ADA.pdf
Exhibit A-Presentation on Items VI.2-4 and VII.3.pdf
Exhibit B- ACFR & Audit Report for FY 2022.pdf

## III. AWARDS AND PRESENTATIONS:

**III.1** 23-293 Update on "Mission Space Coast" by the Economic Development Commission of Florida's Space Coast.

## IV. DELEGATIONS:

In accordance with the City Council's rules and procedures, residents or tax-payers of the City (upon any subject of general or public interest), City employees (regarding his/her employment), and water and sewer customers (on matters related to the City's water and/or sewer system), may address the City Council under Delegations on items not on the printed agenda by filling out a speaker card.

Speaker cards are located outside the Council meeting room and should be provided to the City Clerk. Please observe the time limit of three (3) minutes while speaking under Delegations. Delegations shall be limited to thirty (30) minutes unless extended by Council.

## V. CONSENT AGENDA:

**V.1** 23-314 Approve a Resolution to Waive Competitive Bidding, by way of Sole Source to Southern Sewers Inc of Orlando Florida for the repairs to the VACCON Jet -Vacuum Cleaner Truck System and authorize the City Manager to issue the purchase order.

***Attachments:***
- Resolution to Waive Competitive Bid repairs to VACCON DEBRIS TANK.doc
- Vac-Con Sole Source 3 Locations 10.05.20.pdf
- 2ND UPDATED QUOTE# 11133A.pdf

**V.2** 23-321 Approve a Budget Resolution, Amending the FY2023 Budget, BAF# 23-080-T in the amount of $231,146; Approve Change Order #1 for Elenis Contracting LLC/PO 80847 in the amount of $231,146; Approve Project Resolution Authorizing the City Manager to Issue Change Orders with a Total Project Contingency not to exceed $273,559 for the Dyal Ground Water Filter #3 Project (WS23DF)

***Attachments:***
- 80847.pdf
- Budget Resolution FY 2023- ADA Compliant.docx
- BAF 23-080-T-UT-Filter 3 (6-6-23) Agenda 23-321.pdf
- Resolution Project Contingency Filter #3 WS23DF.doc
- Change Order Request #1 (PO 80847).xlsx
- Change Order #001 (WS23DF).pdf
- GWF3 Submittal 2 (sov) updated 5-19-22.pdf

**V.3** 23-322 To Approve the First Amendment to Purchase Agreements with Atlantic Development of Cocoa, Inc., and Danus Utilities, Inc. under RFQ Q-20-18-COC; To Award RFQ Q-20-18-COC, General Contractor - Utility Systems, to Hinterland Group, Inc.; To Authorize the City Manager and City Attorney to Negotiate and Execute the Agreement for Utilities General Construction Contractor with Hinterland Group, Inc.

***Attachments:***
- Partial Signed Agreement for Utilities General Construction Contractor Hinterlan
- Agreement for Utilities General Construction Contractor Atlantic.pdf
- Agreement for Utilities General Construction Contractor Danus.pdf
- 1st Amendment Atlantic Partially Ex.pdf
- 1st Amendment Danus Partially Ex.pdf
- Pages from Bid Tabulation.pdf

MULTI-YEAR CONTRACTS:

**V.4(b)** 23-281 To Approve Participation in a Multi-Year Piggyback Agreement with Crom, LLC for Concrete Tank Repairs Utilizing the City of West Palm Beach Master Water Storage Tank Cleaning and Repair Services Agreement Amendment No. 1, Effective June 4, 2019 through June 3, 2024; To Authorize the City Manager to Execute the Piggyback Agreement and any Amendments and Renewals Under the Existing Contract; To Authorize the City Manager to Approve a Purchase Order to Crom, LLC in the Amount of $161,163.90.

***Attachments:*** Crom Proposal 5-9-23.pdf
Crom COI Exp 12-31-23.PDF
Standard Form for Piggyback Contract No. ITB 18-19-115 SIGNED JP.pdf
E-Verify CROM Affidavit Signed JP.pdf
M002-R-WPB_West Palm Beach_CCR_Fully Executed.pdf
M002RWPB Renewal Term Extensions FE 2.25.22.pdf

**V.5(b)** 23-317 Approve a multi-year interlocal agreement between the City of Cocoa and the City of Rockledge for School Crossing Guard services for the school year commencing August 10, 2023, and end May 24, 2024.

***Attachments:*** 2023 Rockledge Crossing Guard.pdf

## VI. PUBLIC HEARINGS:

## VII. COUNCIL BUSINESS:

## VIII. CITY BUSINESS:

**VIII.1** 23-309 Approve, as recommended, the proposed Fiscal Year 2024 benefit renewal medical, dental, life, and disability insurance; and to authorize the City Manager to sign related agreements.

***Attachments:*** 041923 - Cocoa - Medical Projection - No Runout.pdf
051223 - Cocoa - Executive Summary 2023-2024.pdf
051223 - Cocoa - Renewal Evaluation 2023-2024.pdf

## IX. INFORMATIONAL AGENDA:

## X. REPORTS:

## XI. ADJOURNMENT

## XII. NOTICE TO THE PUBLIC:

This is a public meeting. All interested parties may attend in person. The facility wherein this public meeting will be held is accessible to the physically handicapped. In accordance with the Americans With Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk of the City of Cocoa, listed below, at least 48 hours prior to the meeting: Carie Shealy, City Clerk, 65 Stone Street, Cocoa, by telephone at (321) 433-8484 or via email at cshealy@cocoafl.org.

Additionally, interested persons may view or listen to the meeting electronically at the following internet sites:
(1) https://tinyurl.com/s5e875r or
(2) https://cocoa.legistar.com/DepartmentDetail.aspx?ID=26365&GUID=FF9D3369-D354-4FAB-800A-57D0AEE30153&Mode=MainBody

However, the City is not responsible for technical difficulties that may occur while attempting to view or listen to the meeting on the internet.

Interested persons may submit their written comments or questions regarding the meeting prior to the meeting through Email at meetings@cocoafl.org, or via E-comments through the online agenda. Any electronic comments submitted will be made part of the meeting record. Written comments or questions not relevant to the Council meeting agenda will not be made part of the meeting record but will be maintained as public record.

Pursuant to Section 286.0105, Florida Statutes, the City hereby advises the public that: if a person decides to appeal any decision made by the City Council with respect to any matter considered at its meeting or hearing, that person will need a record of the proceedings and for such purpose, affected persons may need to assure that a verbatim record of the proceedings is made, and such record shall include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals otherwise not allowed by law.

Although members of the public are entitled to be heard by the City Council on certain items on the meeting agenda pursuant to the City Council Rules of Procedure, members of the public are not entitled to an immediate response by either administrative staff members or Council; however, the City Council or administrative staff may provide a response at their discretion. When presenting before the City Council, all comments or questions should be directed to the Mayor or the chair of the meeting. Comments or questions should not be made directly to administrative staff without permission from the Mayor or chair.
Public debate by individual speakers from the audience on public hearing items shall be limited to three (3) minutes. Applicants or representatives of recognized groups with special interests in a matter shall be limited to ten (10) minutes; and total debate on a single issue shall be limited to thirty (30) minutes. Only one presentation per person per item shall be allowed.

A Council member may add an item to the agenda during the meeting only at the time the agenda is approved. If the item requires action by the Council, then it may be added to the agenda by an affirmative vote of the Council, and written documentation must be submitted at the time the item is added to the agenda. Matters may also be raised by the Council, City Manager or City Attorney under reports and acted upon by the City Council.

This agenda is posted on the Municipal Bulletin Board and at the Central Brevard Library and Reference Center in Cocoa for public review.

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-341 | **Version:** | 1 | **Name:** | |
| **Type:** | Agenda | | | **Status:** | Agenda Ready |
| **File created:** | 5/26/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Approve the Agenda for the Regular meeting of June 6, 2023, as presented or with amendments. | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | 06-06-2023 Short Agenda ADA.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 26, 2023
Agenda Date: June 6, 2023
Prepared By: Carie Shealy, City Clerk
Through:
Requested Action:
Approve the Agenda for the Regular meeting of June 6, 2023, as presented or with amendments.

## BACKGROUND:

The City Council approves the agenda for all of its regular meetings at the beginning of such meetings.

## STRATEGIC PLAN CONNECTION:

na

## BUDGETARY IMPACT:

na

## PREVIOUS ACTION:

The City Council has approved its agenda for all regular meetings at the beginning of such meetings.

## RECOMMENDED MOTION:

Approve the Agenda for the Regular meeting of June 6, 2023, as presented or with amendments.

# Agenda
# City of Cocoa
# Regular Meeting of The City Council

## Date: June 6, 2023
## Time: 6:00 pm
## Location: 65 Stone Street Cocoa, FL 32922

**I. Opening Matters:**

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call

**II. Approval of Agenda and Minutes:**

**1. Agenda:** Regular Meeting of June 6, 2023. (23-341)

**2. Minutes:** (a) Regular Meeting of April 11, 2023 (23-348)
(b) Regular Meeting of April 25, 2023 (23-349)

**III. Awards and Presentations:**

1. Update on "Mission Space Coast" by the Economic Development Commission of Florida's Space Coast. (23-293). (Angela Neal, Director of Special Projects)

**IV. Delegations:**

In accordance with the City Council's rules and procedures, residents or tax-payers of the City (upon any subject of general or public interest), City employees (regarding his/her employment), water and sewer customers (on matters related to the City's water and/or sewer system), and any person on any item on the agenda (except *Emergency items, Ministerial items, Quasi-judicial items, and Public Hearing items),* may address the City Council under Delegations by filling out a speaker card.

**This Agenda may be Amended up until or at the Meeting**

Speaker cards are located in the Council Chamber lobby and should be provided to the City Clerk. Please observe the time limit of three (3) minutes while speaking under Delegations. Delegations shall be limited to thirty (30) minutes unless extended by Council.

## V. Consent Agenda:

### (A) General Consent Items:

1. Approve a Resolution to Waive Competitive Bidding, by way of Sole Source to Southern Sewers Inc of Orlando Florida for the repairs to the VACCON Jet - Vacuum Cleaner Truck System and authorize the City Manager to issue the purchase order. (23-314). (Public Works Director)

2. Approve a Budget Resolution, Amending the FY2023 Budget, BAF# 23-080-T in the amount of $231,146; Approve Change Order #1 for Elenis Contracting LLC/PO 80847 in the amount of $231,146; Approve Project Resolution Authorizing the City Manager to Issue Change Orders with a Total Project Contingency not to exceed $273,559 for the Dyal Ground Water Filter #3 Project (WS23DF). (23-321). (Utilities Director)

3. Approve the First Amendment to Purchase Agreements with Atlantic Development of Cocoa, Inc., and Danus Utilities, Inc. under RFQ Q-20-18-COC; To Award RFQ Q-20-18-COC, General Contractor - Utility Systems, to Hinterland Group, Inc.; To Authorize the City Manager and City Attorney to Negotiate and Execute the Agreement for Utilities General Construction Contractor with Hinterland Group, Inc. (23-322). (Utilities Director)

### (B) Multi-Year Contracts:

4. Approve Participation in a Multi-Year Piggyback Agreement with Crom, LLC for Concrete Tank Repairs Utilizing the City of West Palm Beach Master Water Storage Tank Cleaning and Repair Services Agreement Amendment No. 1, Effective June 4, 2019 through June 3, 2024; To Authorize the City Manager to Execute the Piggyback Agreement and any Amendments and Renewals Under the Existing Contract; To Authorize the City Manager to Approve a Purchase Order to Crom, LLC in the Amount of $161,163.90. (23-281). (Utilities Director)

5. Approve a multi-year interlocal agreement between the City of Cocoa and the City of Rockledge for School Crossing Guard services for the school year commencing August 10, 2023, and end May 24, 2024. (23-317). (Chief of Police)

**VI. Public Hearings:**

None.

**VII. Council Business:**

None.

**VIII. City Business:**

1. Approve, as recommended, the proposed Fiscal Year 2024 benefit renewal medical, dental, life, and disability insurance; and to authorize the City Manager to sign related agreements. (23-309). (Administrative Services Director)

**Multi-Year Contracts:**

None.

**IX. Informational Agenda:**

None.

**X. Reports:**

**XI. Adjournment:**

**XII. Notice To The Public:**

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(1) https://tinyurl.com/s5e875r or

**This Agenda may be Amended up until or at the Meeting**

(2) https://cocoa.legistar.com/DepartmentDetail.aspx?ID=26365&GUID=FF9D3369-D354-4FAB-800A-57D0AEE30153&Mode=MainBody

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submitted at the time the item is added to the agenda.  Matters may also be raised by the Council, City Manager or City Attorney under reports and acted upon by the City Council.

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**This Agenda may be Amended up until or at the Meeting**

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-348 | **Version:** | 1 | **Name:** | |
| **Type:** | Minutes | | | **Status:** | Minutes |
| **File created:** | 5/31/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Approve the Minutes of the Regular meeting of April 11, 2023, as written or with amendments. | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | 04-11-2023 Minutes.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 31, 2023
Agenda Date: June 6, 2023
Prepared By: Carie Shealy, City Clerk
Through:
Requested Action:
Approve the Minutes of the Regular meeting of April 11, 2023, as written or with amendments.

## BACKGROUND:

NA

## STRATEGIC PLAN CONNECTION:

NA

## BUDGETARY IMPACT:

NA

## PREVIOUS ACTION:

The City Council approves the minutes of all its meetings following transcription.

## RECOMMENDED MOTION:

Approve the Minutes of the Regular meeting of April 11, 2023, as written or with amendments.

**MINUTES**
**City of Cocoa**
**Regular Meeting of The City Council**

**April 11, 2023**

A Regular City Council Meeting was held on Tuesday, April 11, 2023, in Cocoa City Hall, in City Council Chambers, located at 65 Stone Street, in Cocoa, Florida, 32922, as publicly noticed.

## I. Opening Matters:

Mayor Blake called the meeting to order at 6:00 p.m.

Deputy Mayor Hearn provided the invocation and Paul Kamus led the assembly in the Pledge of Allegiance to the Flag of the United States of America.

The City Clerk took the roll.

| | | |
|---|---|---|
| PRESENT: | Michael C. Blake | Mayor |
| | Lavander Hearn | Deputy Mayor |
| | Rip Dyal | Councilmember |
| | Alex Goins | Councilmember |
| | Lorraine Koss | Councilmember |
| | Anthony Garganese | City Attorney |
| | Stockton Whitten | City Manager |
| | Carie Shealy | City Clerk |

OTHER STAFF MEMBERS PRESENT:

Jack Walsh, Utilities Director; Charlene Neuterman, Community Services Director; Tammy Gemmati, Administrative Services Director; Samantha Senger, Director of Communications & Economic Development; Evander Collier, Chief of Police; Rebecca Bowman, Finance Director; Jonathan Lamm, Fire Chief; Mitch Lawyer, Tech Services Supervisor; Bryant Smith, Public Works Director; and Erik Montgomery, Help Desk Support Tech.

## II. Approval of Agenda and Minutes:

**1. Agenda:** Regular Meeting of April 11, 2023. (23-233)

*** MOTION by Councilmember Dyal; Seconded by Councilmember Goins, to approve the Agenda as presented for the Regular meeting of April 11, 2023.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

**2. Minutes:** (a)Regular Meeting of February 28, 2023 (23-207)
(b)Special City Council Meeting of February 23, 2023 (23-220)
(c)Special City Council Meeting of March 6, 2023 (23-221)

* **MOTION by Councilmember Koss; Seconded by Deputy Mayor Hearn, to approve the Minutes for the Regular meeting of February 28, 2023 as written; the Special City Council meeting of March 6, 2023 as written; and the Special City Council Meeting of February 23, 2023, with the following amendment: on page 2, paragraph 2, where it reads "she read a blurb from the Florida Municipal Officials Manual that says "Workshops are not formal legislative meetings; therefore, no official action can be taken." The next sentence should start with "She asked".**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

## III. Awards and Presentations:

1. Proclamation: Proclaiming Saturday, April 22, 2023 as Arbor Day. (23-97). (Public Works Director)

Mayor Blake read the proclamation into the record.

## IV. Delegations:

Paul Kamus, Cocoa resident, provided a photo and video to Council of a water leak that happened at his home. It was on his side and not the city's and noticed when he received his water bill. He checked his meter and it was filled with water. He recommended that when the meter readers check the meter if they see moisture in it, they leave some sort of notice for the homeowner. This way they would be aware of the possible leak. He will also be at the upcoming Arbor Day event with the "Love" sign.

Ms. Bowman explained that if there is visible water in the meters notes are placed on the customers' account and further explained that if their bills are higher than usual they are notified as well.

Anita Gibson, Cocoa resident, spoke about gun control and of her passion for a cold case unit in Cocoa. She mentioned recent news and her heart goes out to all of the children. She asked that when budget is considered that a cold case unit and more officers be added.

Aleck Greenwood, Cocoa resident, spoke about Item VII.1 and believes that the Code Board got it wrong on this case. He provided a brief history of the property and urged Council to watch the video of the meeting. He further spoke about the City's designation as a Tree City USA and with the help of the Planning & Zoning Board it has grown. He mentioned that he was not included in the recent tree board meeting and was mistreated by not receiving information that had been sent out.

Todd Riggs, Cocoa resident, advised that at a recent Council meeting he was told by both the City Manager and Public Works Director that the City was not doing site prep on North Dixon and Indian River Drive. This past week he has observed men working there and they are mostly City employees. An access road and a seawall has been constructed and new grass has been installed along the shore. He stated that this looks like site prep and a worker had told a neighbor they were doing site prep.

Mr. Riggs asked why a sea wall was built when the intersection floods first. He further asked why they built a raised road to access a drainage ditch that only services two houses and why were public resources being poured into proverbial and swampland in Florida that is privately owned. He asked who owns the LLC and who was meeting with them and making these plans as he does not remember this coming before Council.

Deputy Mayor Hearn advised that he had received many calls about this and went to both the City Manager and Mr. Smith about re-establishing the ditch in the area to help with flooding.

City Manager Whitten stated that the City was not doing site prep on anyone's property. The drainage in that area was discussed at a workshop. Council is well aware of the efforts to recreate that ditch and it is not an access road. There is a difference in easements and access to help with property improvements which

were discussed as well. The shoreline project is being done and it is on private property but the public will benefit from this and they are not developing anything on private property for the owner.

Mr. Smith explained the project and pointed out that after one of the hurricanes they got the go ahead to perform the work. This project is to protect the roadway. They are restoring it to its extent so that they do not have to keep closing the area. The cost was about $34,000.

Councilmember Koss mentioned the Manfretti's and the issues with their property. Mr. Smith assured her they would look at the area again. She agreed that the work was beautiful and looks really nice. Mr. Smith explained the cost in furtherance noting that materials were about $30,000 and labor is done in house. Councilmember Koss stated that the questions were in regards to the timing of it all.

Mayor Blake asked Mr. Smith if homeowners reached out to him. In response, Mr. Smith stated residents of S. Indian Circle did. Everyone had a chance to convey their thoughts.

Deputy Mayor Hearn believes there were concerns of the property owner trying to do some work. Mr. Smith advised that it is private property on both sides and it is their responsibility to make repairs and this was an emergency repair. Mr. Smith further advised that if a property owner is going to offer an easement they will take it.

Deputy Mayor Hearn feels that one of the biggest issues is that citizens do not know what is going on. Mr. Smith shared that a press release was done and it was released on social media and was on the website. Mr. Smith was not aware of any questions and anytime they get them they are more than happy to speak with someone and explain the project.

Councilmember Goins spoke about statements being made and that there is a big difference in prices we purchase materials for versus what a contractor pays. He further feels that they need to be careful when statements are made that staff is working with a developer. He hoped that the answers provided by Mr. Smith satisfies questions asked and that this would squash the rumors.

Mr. Riggs stated he would provide questions and appreciates the next level of answers. He has a vague feeling of the points he made about the costs and that

the land owner is benefiting from this, whereas, all of the others have had to spend money.

Councilmember Goins asked if he would rather them not do anything. In response, Mr. Riggs understands the road is eroding and something needed to be done.

Mayor Blake feels that false accusations are being made and if you speak in a more calming manner you get better results. This is one sided and it is not fair when you are doing what you are supposed to do. When Mr. Riggs came up he identified individuals but he has not sat down and talked with them. Mr. Riggs stated no offense was intended.

Councilmember Goins asked how wide Cocoa's easement was and in response, Mr. Smith stated it was a five-foot entry and a right of entry on the other side.

City Manager Whitten advised that the drainage easement existed and the right of use was done for this. The right of use does not allow a citizen to drive down the road. He stated that no offense was taken but the questions have been answered and answers have not changed because no questions were ever asked. It is a shame for staff members, who are of character to be told they are in cahoots with developers. It is offensive and not true. Meetings with developers happen all of the time. He can defend himself as he has been in government for thirty years and no one can accuse him of being in cahoots with a developer. Staff is task oriented and they would not have this information. This is a $35,000 project and in terms of transparency, Mr. Smith and Ms. Senger both advised there was a press release and it was on the website. The project needed to get done before the hurricane season in order to shore up the shoreline so that it does not wash away during the next hurricane season.

Councilmember Goins stated that when it comes to these projects it seems that many do not want the government in that corridor at all. He understands that everyone is not always going to agree but staff has the expertise to get things done and if questions are not asked than it is speculation.

Councilmember Koss noted that there is a reason to why people react to development in that area and it is because it is close to the Lagoon and full of wildlife. With this project four feet of land mass was added to private property and it does grab attention. The work is beautiful but the property has not been approved by St. John's Water Management and that is where the sensitivity for the area comes in.

Deputy Mayor Hearn requested that if there are any talks of development in that area to give them the courtesy of what is going on.

City Manager Whitten announced that there is development happening or not happening in each district. Developers walk in all of the time to predevelopment and development meetings. He reiterated Councilmember Goins' question to what they would have rather them do. Let it wash away? It is hard to sit here and take this when you have answered all of the questions and to have someone come up and say that you are assisting a property owner and building up their property. He stressed that again, this is not the case and this project is about protecting the roadway from another storm.

## V. Consent Agenda:

## (A) General Consent Items:

1. Approve a Resolution Waiving the Competitive Bidding Process for the Purpose of Making a Sole Source Purchase of Replacement Clarifier Baffles with Installation from Ovivo USA, LLC Sedimentation Group for the Jerry Sellers Water Reclamation Facility and to Approve a Budget Resolution Amending the FY2023 Budget, BAF #23-058-A in the amount of $61,890. (23-129). (Utilities Director)

2. Approve a Resolution Amending the FY 23 Budget, BAF #23-055-A, to accept the grant revenue for the State of Florida Historic Preservation Grant for the replacement of windows and doors at the Leon and Jewel Collins Museum of African American History and Culture in the amount of $150,500 and fund the grant match in the amount of $150,500 through the use of General Fund Balance Reserves. (23-153). (Community Services Director)

3. Approve a Municipal Services Agreement with Alliance for Neighborhood Restoration of Brevard for FY2024, pending the final approval of the City of Cocoa FY2024 budget. (23-201). (Chief of Police)

4. Authorize the City Manager to Terminate the Agreement for Utilities General Construction Contractor, dated November 9, 2020, with Southern Underground Industries, Inc. under RFQ-20-18-COC. (23-226). (Utilities Director)

5. Approve a three-month extension of the Contract with the City's Investment Advisor, Public Trust Advisors. (23-236). (Finance Director)

**(B) Multi-Year Contracts:**

6. Approve Participation in a Multi-Year Cooperative Purchase Agreement with W.W. Grainger, Inc., Lake Forest, IL, for Facility MRO, Industrial, and Building-Related Supplies and Equipment for the Dyal Water Treatment Plant Utilizing the Sourcewell RFP #091422, Effective November 7, 2022 through November 8, 2026 and a Renewal, Upon Request, Option for an Additional two (2) one (1) year periods; To Authorize the City Manager to Approve Purchase Orders up to the Adopted Budget Amounts and Extensions for the Contract. (23-211). (Utilities Director)

7. Approve a Multi-Year Piggyback Agreement with Southland Controls Inc., Palm City, Florida, for Lime Slaker Repair Services for the Dyal Water Treatment Plant Utilizing the City of Sunrise, Florida, Bid Number 21-26-05-CM, effective August 13, 2021 through August 13, 12, 2023 and a renewal option for an Additional two (2) one (1) year periods; To Authorize the City Manager to Execute the Service Agreement, Piggyback Agreement and any Extensions; To Authorize the City Manager to Approve related purchase orders for each year in the contract. (23-81). (Utilities Director)

*** MOTION by Councilmember Dyal; Seconded by Mayor Blake, to approve the Consent agenda.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

**VI. Public Hearings:**

1. Consideration of Second and Final Reading of Ordinance 01-2023 a Zoning Map Amendment consistent with Appendix A, Zoning, Article XXII, changing the Official Zoning Map designation of two (2) parcels totaling ±.64 acres from County Single-Family Residential (RU-1-9) to City Single-Family Residential (RU-1-7). (23-216). (Public Works Director)

Attorney Garganese read Ordinance No. 01-2023 into the record, by title only, as follows. He advised this was the second and final reading, and is a quasi-judicial matter.

**ORDINANCE NO. 01-2023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING THE OFFICIAL ZONING MAP DESIGNATION OF TWO (2) PARCELS OF REAL PROPERTY, TOTALING 0.64 ACRES, MORE OR LESS, AND GENERALLY LOCATED ON THE SOUTHEAST CORNER OF AURORA STREET AND JACKSON STREET, MORE PARTICULARLY DEPICTED AND LEGALLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO, FROM BREVARD COUNTY RU-1-9 (SINGLE FAMILY RESIDENTIAL) TO RU-1-7 (SINGLE FAMILY RESIDENTIAL DISTRICT); PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.**

Mr. Smith noted there has not been any changes since the first reading.

Mayor Blake opened the hearing to the public. There being no response, the public portion of the hearing was closed.

* **MOTION by Councilmember Goins; Seconded by Councilmember Dyal, to approve Ordinance No. 01-2023 on Second and Final Reading.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

## VII. Council Business:

1. Approve the current Code Enforcement Lien Reduction for the property located at 123 Factory St per either the Code Board's or Staff's recommendation. The Code Enforcement Board recommended that the lien be reduced to $1,000.00, staff recommended it be reduced to staff's cost $3,329.13. The Code Board reduced the amount to $1,000.00 due to hardship. (23-222). (Chief of Police)

Mayor Blake stated that this was commercial property and that there are some unique circumstances. He advised that when commercial property is sold the price increases. Additionally, in 2019 the Business Tax Receipt was denied and shared the reasons for denial. He pointed out that the applicant refused to comply and it appeared that the applicant was defiant when he received the letter.

Matthew Hall, the applicant, Factory Street, in Cocoa, does a lot of work for the City (environmentally) and he had hired an attorney who told him he was fine. He was not aware of the lien until he tried to refinance the property.

Mayor Blake asked what he planned to do with the property and in response, Mr. Hall stated he would probably sell it if he can.

In response to a question posed by Mayor Blake in regards to the Consent Decree, Attorney Garganese explained in detail that the zoning was a very unique designation with limited commercial uses.

* **MOTION by Mayor Blake; Seconded by Councilmember Goins, to approve Staff's recommendation that the lien be reduced to staff's cost of $3,329.13.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

Mayor Blake feels that staff needs to come back with an ordinance for commercial versus residential because the sale amounts are significantly different.

## VIII. City Business:

1. Approval of a Final Subdivision known as Riverwalk consistent with Chapter 18 - Subdivisions and Appendix A - Zoning of the City of Cocoa City Code and Restrictive Covenant related to Tract F. (23-230). (Public Works Director)

Mr. Smith explained that this approval was for the final plat to be recorded. He pointed out that there are some restrictions, a Covenant and a Performance Bond. He stated they have thirty days to record the plat.

* **MOTION by Deputy Mayor Hearn; Seconded by Councilmember Dyal, to approve the item.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

**Multi-Year Contracts:**

**None.**

## IX. Informational Agenda:

1. Approved change orders to construction contracts that the City Council has authorized the City Manager, by resolution, to approve in excess of the City Manager's spending authority. (23-187). (Finance Director)

2. City Council Bi-Weekly Report for March 24-April 6, 2023. (23-234). (City Manager)

## X. Reports:

City Manager Whitten spoke about projects amongst districts and advised that there are pre-application meetings that happen frequently. They are not “projects” until they make an application for a site plan. Once they do that, the process begins. It then goes through Planning & Zoning and then Council. He stated that he does not have an issue with saying there are site plan apps at this time; however, to be required to advise Council when a developer simply asks a question is not fair to the developer or anyone else, until it gets to where Council needs to do their part.

Mr. Walsh clarified an error in Consent Item V.6(B). The total states $337,500 but should state $262,500.

Ms. Senger thanked all who participated in Trash Bash and noted there were 232 volunteers. The City had the most of all other cities who participated. They collected over 19,000 pounds of trash. Ms. Harris will be back at a later Council meeting to acknowledge the winners.

Chief Collier mentioned the event at Riverfront Park on Easter and advised they had about 800-1000 participants. There was one arrest and a few other incidents but overall it went well. He gave kudos to Lt. Roman and his team for putting the event together.

Chief Collier spoke about a SWAT callout and that the standoff lasted eight hours. The person surrendered without incident and he gave kudos to the SWAT team.

Lastly, he spoke about the Police Departments awards ceremony that was held last Wednesday. They acknowledged officers and citizens. He recognized Officer Baylis who won Officer of the Year and Sandra Madison who won Employee of the Year.

City Manager Whitten reminded Council that they recently held a discussion on how hard it is to find applicants for law enforcement, fire, and EMS. This is a nationwide issue. In regards to this, Chief Lamm shared that recently they had fourteen applications and only eleven of those met the requirements to be State Certified Fire Fighters. Out of those eleven, two of them were already going to another department and the others never returned phone calls. There was one applicant who came back and tested.

Additionally, City Manager Whitten noted that he spoke with the County and out of sixty applicants, only twenty tested and only thirteen passed. Furthermore, he had

a meeting with Jack Parker at EFSC and their numbers are down in regards to academies and BCSO has sixty to seventy detention deputy openings.

He assured Council that the City was working on this and he signed MOU that will hopefully go a long way in terms of recruitment and retention.

Ms. Gemmati explained the paramedic incentive in furtherance and associated agreement terms. These incentives will be for existing employees as well as new employees. There is also an upcoming event at Cocoa High School to talk to seniors about police and fire. They will also go on a field trip to the fire house and the police department. This will be done in in hopes of building interest in the academies.

Chief Lamm advised that this has been a huge venture and the City Manager has been very instrumental as he sees a critical need in both fields. He further thanked Ms. Bowman who was helpful in the wording of the MOU.

City Manager Whitten thanked Firefighters Sam Steele and Chuck Burkhardt as they jumped on this and got the MOU signed. He reiterated that this was both for existing employees and new hires.

Chief Lamm announced that the Burn Ban is still in effect. Mayor Blake clarified that there were no water restrictions. In response, Mr. Walsh stated there were none other than the normal irrigation restrictions.

Councilmember Dyal announced that Saturday, April 22nd from 10-3 p.m. is the 2nd Annual Brittany's Wish Foundation's car show in his district at Pints and Pistols. He explained what the foundation was for and stated there would be a lot of cars. He thanked staff for doing a great job.

Councilmember Goins thanked Code Enforcement and Mr. Bunt as you can see the work being done throughout the City.

He showed photos of events he has attended over the last few weeks such as the Family Promise of Brevard opening, Trash Bash, and Legislative Actions Days. He showed photos of and met with the Florida A & M Recruitment Coordinator who is working on a camp for high school athletes to attend so that they can be seen by coaches throughout the country. Lastly, he spoke about a pepper tree on a piece of property that people were living under. It has been removed and the

people are gone. He thanked all for coming to the meeting and asked all to stay positive.

He acknowledged Shauna Ginn as the Interim Housing Authority Director, as she is in attendance.

Councilmember Koss provided a presentation and showed a slide from Elevate Brevard and explained that Dr. Doaks had spoken at the Sustainability Advisory Board meeting. She shared the data provided and noted that Dr. Doaks and Principal Stewart have been able to do great things with wrap around services.

She mentioned a book fair that she attended and gave a shout out to MerryBeth Burgess as it was a great event.

Councilmember Koss showed photos of the shoreline on Indian River Drive and felt that it was really good work. She stated that Mr. Smith and Ms. Morgan are top notch professionals. She reiterated that the conversation held earlier in the meeting had nothing to do with staff or developers but of the impact to the area.

In closing, she reminded all of the performing arts events at the Simpkins Fine Arts Center, which is located at Eastern Florida State College in District 4.

Councilmember Goins spoke about private property rights and asked Councilmember Koss if someone had met all of the requirements needed to build on a piece of property would they be against whomever that was. In response, Councilmember Koss noted that was an excellent question and mentioned access to FEMA maps.[1]

Councilmember Koss noted that when you see trends and there is environmental sensitivity you need to have conversations.

Further discussion was held on wetlands and properties in the area.

Deputy Mayor Hearn thanked staff for the MOU with the firefighters. It is an issue across the state and he feels that first responders are not paid enough for what they do.

[1] Mayor Blake left the meeting at 7:53 p.m. and returned at 7:54 p.m.

He has seen issues at Bracco Pond in regards to full trash cans and asked if a policy could be implemented to where if City staff sees something like this to report it or take care of it. He knows that staff cannot be everywhere at all times.

Deputy Mayor Hearn reached out to a science teacher at Endeavor Elementary and they are going to paint his rain barrel for Arbor Day. He thanked both Endeavor and Emma Jewel for their constant collaboration with the City.

He advised that the upcoming Hey Blue! Event has been changed to April 25th from 4 p.m. until 8 p.m. at Endeavor Elementary. Additionally, he will be attending Career Day at Endeavor Elementary this week.

In closing, he gave a shout out to Sandra Madison who is the Cocoa PD's Employee of the Year; he attended the Trash Bash and used the workout equipment at Bracco Pond; and announced the completion of his Masters Degree at the University of Florida. His degree is in Emergency Management.

Mayor Blake gave kudos to Cocoa High School for having the most volunteers at the Trash Bash and thanked them all.

He announced that they met with Principal Stewart and fourteen juniors and seniors will be employed this summer.

Mayor Blake spoke about his attendance at the Trash Bash and the Backyard BBQ cookoff. The food was excellent and it was at F. Burton Smith Park.

Lastly, he mentioned that he reached out to Mr. Stoll who has been working at the Museum and hoped that he would reach out to the Mosquito Beaters. They have some old Cocoa memorabilia to display.

Mayor Blake thanked all employees and reminded all to buy local, spend local and keep it local.

## XI. Adjournment:

* **MOTION by Councilmember Dyal; Seconded by Councilmember Goins, to adjourn the Regular meeting of April 11, 2023.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

**The meeting adjourned at 8:11 p.m.**

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**Michael C. Blake, Mayor**

**ATTEST:**

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**Carie Shealy, MMC, City Clerk**

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-349 | **Version:** | 1 | **Name:** | |
| **Type:** | Minutes | | | **Status:** | Minutes |
| **File created:** | 5/31/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Approve the Minutes of the Regular meeting of April 25, 2023, as written or with amendments. | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | 04-25-2023 Minutes ADA.pdf<br>Exhibit A-Presentation on Items VI.2-4 and VII.3.pdf<br>Exhibit B- ACFR & Audit Report for FY 2022.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 31, 2023
Agenda Date: June 6, 2023
Prepared By: Carie Shealy, City Clerk
Through:
Requested Action:
Approve the Minutes of the Regular meeting of April 25, 2023, as written or with amendments.

## BACKGROUND:

NA

## STRATEGIC PLAN CONNECTION:

NA

## BUDGETARY IMPACT:

NA

## PREVIOUS ACTION:

The City Council approves the minutes of all its meetings following transcription.

**RECOMMENDED MOTION:**

Approve the Minutes of the Regular meeting of April 25, 2023, as written or with amendments.

**MINUTES**
**City of Cocoa**
**Regular Meeting of The City Council**

**April 25, 2023**

A Regular City Council Meeting was held on Tuesday, April 25, 2023, in Cocoa City Hall, in City Council Chambers, located at 65 Stone Street, in Cocoa, Florida, 32922, as publicly noticed.

## I. Opening Matters:

Mayor Blake called the meeting to order at 6:00 p.m.

A moment of silence was held in honor of Mr. Ed Green who was a Code Enforcement Board member, Redistricting Commission Member and a community volunteer as well as for lifelong resident Ruth Collins. They both recently passed.

Leroy Darby provided the invocation and Lloyd Roberts led the assembly in the Pledge of Allegiance to the Flag of the United States of America.

The City Clerk took the roll.

| | | |
|---|---|---|
| PRESENT: | Michael C. Blake | Mayor |
| | Lavander Hearn | Deputy Mayor |
| | Rip Dyal | Councilmember |
| | Alex Goins | Councilmember |
| | Lorraine Koss | Councilmember |
| | Anthony Garganese | City Attorney |
| | Stockton Whitten | City Manager |
| | Carie Shealy | City Clerk |

OTHER STAFF MEMBERS PRESENT:

Jack Walsh, Utilities Director; Charlene Neuterman, Community Services Director; Tammy Gemmati, Administrative Services Director; Samantha Senger, Director of Communications & Economic Development; Jeremy Ondo, Police Lieutenant;

Rebecca Bowman, Finance Director; Jonathan Lamm, Fire Chief; Rob Beach, Chief Technology Officer; Bryant Smith, Public Works Director; and Lisa Richardson, Help Desk Support Tech.

## II. Approval of Agenda and Minutes:

**1. Agenda:** Regular Meeting of April 25, 2023. (23-258)

* **MOTION by Mayor Blake; Seconded by Deputy Mayor Hearn, to amend the agenda for the Regular meeting of April 25, 2023, to add a presentation by Emma Jewel Charter Academy as Item III.1; move the Citizens Academy Graduation to Item III.2 and to move the Key to the City presentation to Item III.3. Consent Item V.3 was also moved to City Business Item VIII.3.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

**2. Minutes:** (a) Regular Meeting of March 14, 2023 (23-269)
(b) Special Meeting of March 20, 2023 (23-270)
(c) Special Meeting of March 30, 2023 (23-272)

* **MOTION by Mayor Blake; Seconded by Councilmember Goins, to approve all sets of Minutes as written, as noted above.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

## III. Awards and Presentations:

1. Emma Jewel Charter Academy presentation. (Thomas Cole, Principal, Emma Jewel Charter Academy)

Thomas Cole introduced his group in attendance and spoke about their program titled “Knights of Pythagoras” and what the program entails. Junior Khalon Cole spoke in regards to the upcoming community cleanup and Senior Adam Smith explained what the program entailed as well. A video was shown of their group in action around the community.

Mayor Blake thanked them and Mr. Cole for all that they do. Mr. Cole pointed out that the kids need to have twenty community service hours before June and that they are willing to do work. He thanked Council for their time.

Mr. Lloyd Roberts noted that interested persons can call the school at 321-634-5464 if they want to utilize them.

2. Citizens Academy Graduation. (23-223). (Director of Communications & Economic Development)

Ms. Senger provided a brief background of the Citizens Academy and provided a slide show of some of the events they participated in. She, along with Ms. Bonadio acknowledged the graduates and provided each of them with a Certificate of Completion and a token of appreciation for their participation in the academy. This is the fourth Academy class.

3. Key to the City Presentation to Tra Blake. (23-172). (Mayor Blake)

Mayor Blake introduced Tra Blake and spoke about legends in the Blake family. He introduced his father Dick Blake who was in attendance as well. Coach Willie Jeffries spoke via the phone as well as Neely Dunn on behalf of Tra Blake and his accomplishments.

Dick Blake spoke and stated that he had the honor of being the Principal of Cocoa High School for twenty-three years. His nephew Tra Blake was an Honor grad and played basketball. He is proud of his nephew and commended the Council members for recognizing him.

Councilmember Goins read and presented the Key to the City to Tra Blake. He spoke of his excitement when he sees him on television refereeing a game and how much it means to the City of Cocoa. He voiced his appreciation for him.

Tra Blake thanked the City of Cocoa and Council for recognizing him. He was very humbled. He thanked his wife, family, and friends for being along with him on this journey. He is the 8th black referee in the NFL and told all of the young men in attendance to set a goal and a dream for themselves. He thanked everyone again.

Mayor Blake invited James Folston to the front and felt that Mr. Folston is not always recognized for the lives he has touched and for all he does behind the scenes. A brief history was read about Mr. Folston and it was pointed out that he has volunteered more than 15,000 hours in his community and at Cocoa High School.

Mayor Blake spoke of his appreciation of Mr. Folston and that the football stadium at Cocoa High School was named after his father, Dick Blake, and they want to name the new track at Cocoa High School after James Folston.

Mr. Folston was humbled for the recognition and thanked all of those who have molded him into what he is today.

* **MOTION by Mayor Blake; Seconded by Councilmember Goins, to take a five-minute recess. The recess began at 7:20 p.m.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)[1]**

* **MOTION by Councilmember Dyal; Seconded by Deputy Mayor Hearn, to reconvene the meeting. The meeting reconvened at 7:29 p.m.**

**AYES: Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (4-0)**

**Deputy Mayor Hearn took over the meeting at this time.**

## IV. Delegations:

Paul Kamus, Cocoa resident, spoke about faith, hope and love as well as the Arbor Day event. He further mentioned the fire pumper trucks and asked if the booster line was on the truck. He wanted to ensure that the firefighters have all necessary equipment.

Odeika Giscombe, Cocoa resident, announced the start of the Rise Mentoring, Inc. program and what they do in empowering young ladies. She noted that they equip young ladies with life skills to help them get through life. The program is open to all young ladies ages 12-18 and they have to be in middle school or high school. Felicia Goins spoke and asked for a partnership with the City and hoped fees could be waived for future fundraising events in the city. They believe this will bring positive impacts to the City and would also like partnerships with the police and fire departments.

[1] Mayor Blake left the meeting at 7:20 p.m.

Deputy Mayor Hearn thanked them for the initiative and felt many times the ladies are overlooked.

Councilmember Goins stated that there are 2,600 non-profits in Brevard County but in the City of Cocoa there can never be too many. There is a need for mentors for young people and he commended them for taking the initiative to do this.

Kirk Pasqualle, Cocoa resident, spoke about an issue with City codes and a shed he would like to replace. They live in Carlton Terrace. It was pointed out that an item about this would be held later in the meeting.

John Verdi, founder of Hey, Blue!, advised that they have been going to Endeavor Elementary with the Police department and have had over 180 positive connections with children in the classrooms. He invited Council to the next Design Thinking Session which will be on May 2nd from 4-8 p.m. at Endeavor Elementary. The more people who come means more money raised for the children of Endeavor Elementary. He asked anyone wishing to attend to RSVP as seats are limited to sixty.

## V. Consent Agenda:

### (A) General Consent Items:

1. Request Council to award Bid # B 23-18-COC to the lowest responsive bidder Air Mechanical & Service Corp for the replacement of two 20-ton air condensing units at City Hall in the amount of $55,279 and execute the agreement. Approve a Resolution Amending the FY 2023 Budget, BAF # 23-063-T. Approve a Project Contingency Resolution for approval of any Change Orders not to exceed $5,000. Authorize the City Manager to execute amendments and extensions to the agreement within approved contingency. (23-227). (Public Works Director)

2. Accept the Award of the Firehouse Subs Grant, a Private Foundation Grant, in the amount of $17,020.72. Firehouse subs will be purchasing four police E-bikes for the City of Cocoa Police Department, however, for accounting purposes, approve a Resolution Amending the FY2023 Budget, BAF#23-065-A. (23-235). (Chief of Police)

3. ~~Approve a Resolution Amending the FY23 Budget, BAF 23-066-T1 and T2, to transfer funds from Operational accounts to Capital funds for the Design and Fabrication of a SWAT van in the amount of $62,976, Approve a Resolution to~~

~~Waive Competitive Bidding, and to approve the Service Agreement with Pride Enterprises. (23-239). (Chief of Police)~~

- **This item was moved to City Business VIII.3.**

4. Approve a Resolution Amending the FY23 Budget, BAF # 23-069-A, to add budget to the Disaster Emergency Divisions which funded expenses during Hurricanes Ian and Nicole. (23-253). (Finance Director)

5. Approve the task order and purchase of critical technology infrastructure in the amount of $70,636.21. (23-264). (Chief Technology Officer)

6. Approve a Resolution Amending the FY23 Budget, BAF # 23-042-A, to add funds to the Information Technology budget to cover Smarsh Professional Archive licenses. (23-273). (Chief Technology Officer)

**(B) Multi-Year Contracts:**

7. Approve the Scope of Services and Task Order 2023-03 with Wharton-Smith, Inc. for Construction Manager at Risk (CMAR) Services for the Internal Recycle Pump, Influent Pump Station, and Transfer Pump Station Replacement and Rehabilitation Project at the Jerry Sellers Water Reclamation Facility; To Approve as a Multi-Year Contract from FY2023 through FY2025; To Approve a Resolution Amending the FY2023 Budget, BAF# 23-064-IFT. (23-237). (Utilities Director)

8. Approve the Final Ranking of the Short-Listed Firms for RFQ-23-12-COC, Engineering Services for Design, Permitting, and Services During Construction for Utility Conveyance Systems Upgrades and Expansion; To Authorize the City Manager and City Attorney to Negotiate and Execute a Multi-Year Contract with the Top-ranked Firms. (23-254). (Utilities Director)

9. Approve a Multi-Year Piggyback Agreement with PDCS, LLC for Fire Inspection Services, Plan Review and Community Risk Reduction Services though September 30, 2025. Approve a Resolution Amending the FY23 Budget, BAF# 20-060-A. Authorize the City Manager to Execute the Agreement and Approve Related Purchase Orders for Each Fiscal Year, Pending the Adoption of each year’s Annual Budgets. (23-256). (Fire Chief)

*** MOTION by Councilmember Dyal; Seconded Councilmember Goins, to approve the Consent Agenda.**

**AYES: Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (4-0)**

## VI. Public Hearings:

1. CONDUCT A PUBLIC HEARING TO OBTAIN CITIZEN INPUT AND COMMENTS ON HOUSING AND COMMUNITY SERVICES NEEDS AND APPROVE RECOMMENDATIONS ON THE FY 2023-2024 CDBG AND HOME PROGRAM FUNDING. (23-255). (Community Services Director)

Ms. Neuterman explained what this public hearing entailed. She advised that for FY 2023-2024, and based on last year's allocation, the City anticipates receiving $128,609 in Community Development Block Grant (CDBG) funds from the U.S. Department of Housing & Urban Development (HUD) as a direct entitlement. The City also anticipates receiving $76,044 in HOME Investment Partnership Program (HOME) funds from HUD as part of the Brevard County HOME Consortium, which is composed of the cities of Cocoa, Melbourne, Palm Bay, Titusville, and Brevard County.

The use of CDBG funds must meet one of the three National Objectives of which she explained in detail. Additionally, CDBG allows a maximum of 15 percent of the grant to be allocated to a public service agency and a maximum of 20 percent of the grant to be allocated for staff administration.

HOME funds can only be used to address housing needs such as: home purchase or rehabilitation financing assistance; build or rehabilitate housing for rent or ownership; or for other reasonable and necessary expenses related to the development of non-luxury housing, including site acquisition or improvement, and demolition of dilapidated housing to make way for HOME-assisted development. There are also some special conditions that exist with HOME funds of which Ms. Neuterman explained.

All activities carried out with CDBG and HOME funds must be consistent with the priorities and needs of the five (5) year Consolidated Plan. The FY 2023-2024 Action Plan will be submitted to Brevard County by July 28, 2023 for submission to HUD.

Staff advertised a notice of funding availability along with a Request for Proposals (proposals) using the anticipated grant allocations. In addition to city staff

generated requests, five (5) proposals were received. All proposals were reviewed at a publicly noticed meeting by a staff review committee.

Based on thorough review of each agency's proposal and financial statements, the committee's recommendations are as follows:

| ***CDBG Public Services - Maximum 15% allowed $19,291.35*** | | | |
|---|---|---|---|
| **Name of Agency** | **Description of services to be provided** | **Amount Requested** | **Amount Recommended** |
| Brevard Alzheimer's Assoc. | Provide transportation to doctor appointments | $5,000 | $0 |
| Central Brevard Sharing Center | Provide meals to 327 unduplicated low to moderate income persons in the City. | $15,000 | $5,000* |
| Community Services Council | Meals on Wheels/Seniors at Lunch provide 9,200 meals to 93 seniors who reside in the City. | $11,979 | $5,250* |
| Family Promise | Rental/Mortgage assistance for up to 15 households in the City. | $10,447.75 | $5,250* |
| Salvation Army | 15,000 meals to shelter residents for a minimum of 5,000 nights in the City. | $ 7,000 | $3,791.35* |
| ***CDBG SECTION 108 Payments - $83,595.85*** | | | |
| Section 108 Loan Guarantee Program | Repayment of Section 108 Loan | N/A | $83,595.85* |
| ***CDBG Administration - 20% - $25,721.80*** | | | |
| City Staff | Salaries | N/A | $24,721.80* |
| Fair Housing | | N/A | $ 1,000 |
| ***Total CDBG Allocation*** | | | ***$128,609*** |

| ***HOME Administration- 7.43%* Brevard County Staff Admin 2.57%* - Total Admin 10%*** |
|---|

| | | | |
|---|---|---|---|
| Brevard County Staff Admin | County admin of HOME funds | N/A | $1,954.33* |
| City Staff Admin | City Staff salaries | N/A | $5,650.07* |
| ***HOME CHDO & Housing Set Aside - $79,466**** | | | |
| CHDO Housing Activity | 15% Mandatory CHDO set aside | N/A | $11,406.60* |
| Homebuyer Assistance Program | Homebuyer Assistance Program | N/A | $57,033.00* |
| ***Total HOME Allocation*** | | | ***$76,044*** |
| ****The award will be modified if any increase or decrease to funding occurs.*** | | | |

As required by the City's Citizen Participation Plan, staff is requesting City Council hold a Public Hearing to obtain citizen input and comments on housing and community development needs and approve recommendations on FY 2023-2024 CDBG and HOME Program funding. Upon the City Council's approval, a 30-day public comment notice listing proposed projects along with the corresponding Action Plan will be advertised in the Florida Today newspaper. The notice will also inform the public of the date of the second and final Public Hearing, which will be held after June 1, 2023.

A question was posed by Councilmember Koss in regards to how many more years were left on the Joe Lee Smith loan. In response, Ms. Bowman believes that it goes through at least 2039. Ms. Neuterman explained that the homebuyers' allocation is a formula calculation.

This portion of the public hearing was closed to Council and opened to the public.

A representative from Family Promise of Brevard spoke and thanked Council and the City and mentioned that these funds would be used to help with their emergency shelter.

A representative from the Salvation Army Domestic Violence Program spoke on behalf of their program and shared that they have been running the program for thirty-nine years. They use this funding to help with food costs in the shelter. It helps provide survivors with necessities during their stay.

Dave Brubaker, Central Brevard Sharing Center, stated that their mission was to provide emergency assistance and guidance in the community to those who are in need. He further introduced Leroy Darby who is one of their Board members. He announced that they offer meals seven days a week and they are only closed during a hurricane. One hundred percent of these funds are used to purchase food for the program. He provided statistics for FY 21/22 and was thankful for the City's support. He encouraged all to come and visit.

This portion of the hearing was closed to the public and opened back up to Council.

* **MOTION by Councilmember Dyal; Seconded by Councilmember Goins, to approve the item.**

Councilmember Goins encouraged all to reach out to their State Representatives about the needs of more funding.

**AYES: Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (4-0)**

2. FIRST READING ORDINANCE 03-2023: CONSIDERATION OF A ZONING MAP AMENDMENT CONSISTENT WITH APPENDIX A, ZONING, ARTICLE XXII, CHANGING THE OFFICIAL ZONING MAP DESIGNATION OF 77 PARCELS TOTALING ±11.59 ACRES FROM COMMERCIAL NEIGHBORHOOD (C-N) TO MULTI-FAMILY DISTRICT (RU-2-15). (23-213). (Public Works Director)

Attorney Garganese read Ordinance No. 03-2023 into the record by title only as follows. He advised that this was the first reading of the ordinance and is recommended by staff as well as the Planning & Zoning Board.

**ORDINANCE NO. 03-2023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING THE OFFICIAL ZONING MAP DESIGNATION OF SEVENTY-SEVEN (77) PARCELS OF REAL PROPERTY, TOTALING 11.59 ACRES, MORE OR LESS, AND GENERALLY LOCATED ON THE SOUTHEAST CORNER OF QUAIL RIDGE COURT AND OTTERBEIN AVENUE, IN COCOA, FLORIDA, MORE PARTICULARLY DEPICTED AND DESCRIBED ON EXHIBIT "A" ATTACHED HERETO, FROM C-N (NEIGHBORHOOD COMMERCIAL DISTRICT) TO RU-2-15 (MULTIPLE-FAMILY DWELLING DISTRICT); PROVIDING FOR THE REPEAL OF PRIOR**

**INCONSISTENT ORDINANCES AND RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.**

Mr. Smith explained the ordinance and pointed out that this was a map correction. He showed a photo of the area being rezoned as well as a map of the current zoning[2]. He reiterated that both staff and the Planning & Zoning Board recommend approval.[3]

This portion of the public hearing was closed to the Council and opened to the public. There being no response, the public portion of the hearing was closed.

* **MOTION by Councilmember Dyal; Seconded by Councilmember Goins, to approve Ordinance No. 03-2023 on First Reading.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

3. FIRST READING ORDINANCE 02-2023: CONSIDER A ZONING TEXT AMENDMENT CONSISTENT WITH APPENDIX A, ARTICLE XI, SECTIONS 10A THROUGH 17, AND SECTION 22 OF THE ZONING ORDINANCE OF THE CITY OF COCOA; CHANGING THE DISTRICT REGULATIONS REGARDING GYM AND FITNESS FACILITIES AS FOLLOWS: ALLOWING GYM AND FITNESS FACILITIES OF ANY SIZE AS A PERMITTED USE IN THE GENERAL COMMERCIAL, COMMERCIAL PARKWAY, WHOLESALE COMMERCIAL, AND PLANNED UNIT DEVELOPMENT DISTRICTS; ALLOWING GYM AND FITNESS FACILITIES OF LESS THAN 7,500 SQUARE FEET AS A PERMITTED USE IN THE RESTRICTED COMMERCIAL AND NEIGHBORHOOD COMMERCIAL DISTRICTS; ALLOWING GYM AND FITNESS FACILITIES OF 7,500 SQUARE FEET OR GREATER AS A SPECIAL EXCEPTION IN THE RESTRICTED COMMERCIAL AND NEIGHBORHOOD COMMERCIAL DISTRICTS; AND ALLOWING GYMS AND FITNESS FACILITIES OF LESS THAN 7,500 SQUARE FEET AS A PERMITTED USE IN THE CENTRAL BUSINESS DISTRICT AND CERTAIN SUBDISTRICTS OF THE COCOA WATERFRONT OVERLAY DISTRICT. (23-214). (Public Works Director)

Attorney Garganese read Ordinance No. 02-2023 into the record by title only as follows. He advised that this was the first reading and recommended by the

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2 EXHIBIT A: Presentation regarding Items VI.2; VI.3; VI.4; and VII.3

3 Mayor Blake returned to the meeting at 8:03 p.m.

Planning & Zoning Board; however, they had one suggestion and that was to define gym and fitness facilities. He explained how it was defined in detail.

**ORDINANCE NO. 02-2023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; CHANGING THE LISTS OF PERMITTED AND SPECIAL EXCEPTION USES IN APPENDIX A, ARTICLE XI OF THE ZONING ORDINANCE OF THE CITY OF COCOA RELATED TO GYM AND FITNESS FACILITIES IN THE RESTRICTED COMMERCIAL, NEIGHBORHOOD COMMERCIAL, GENERAL COMMERCIAL, CENTRAL BUSINESS DISTRICT, COMMERCIAL PARKWAY, WHOLESALE COMMERCIAL, PLANNED UNIT DEVELOPMENT, AND COCOA WATERFRONT OVERLAY DISTRICTS; ADOPTING A DEFINITION OF "GYM AND FITNESS FACILITIES"; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.**

Mr. Smith stated that this was another cleanup item and that right now these are only allowed in two districts. There are facilities in other locations and this will bring them into compliance. The definition was included as requested and both staff and the Planning & Zoning Board recommend approval.

This portion of the public hearing was closed to the Council and opened to the public.

Mac Osborne asked about the waterfront. Mr. Smith explained what the waterfront overlay district means and confirmed that no gym was being put there.

There being no further response, the public portion of the hearing was closed.

* **MOTION by Councilmember Dyal; Seconded by Mayor Blake, to approve Ordinance No. 02-2023 on First Reading.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

4. FIRST READING ORDINANCE 04-2023: CONSIDERATION OF A CITIZEN-INITIATED ZONING MAP AMENDMENT CONSISTENT WITH THE REQUIREMENTS OF CODE OF THE CITY OF COCOA (CODE) ARTICLE XXI, SECTION 1, TO CHANGE THE ZONING DESIGNATION OF A PARCEL OF REAL PROPERTY TOTALING ±0.27 ACRES, IDENTIFIED AS BREVARD COUNTY PARCEL ID NO. 24-36-33-02-0000-0-0004.00, FROM CITY OF COCOA CORE COMMERCIAL (C-C) TO CITY OF COCOA "MULTIPLE-FAMILY DWELLING DISTRICT" (RU-2-25). (23-215). (Public Works Director)

Attorney Garganese read Ordinance No. 04-2023 into the record by title only as follows. He advised that this was the first reading and it was a zoning change that was applied for by the property owner.

**ORDINANCE NO. 04-2023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AMENDING THE OFFICIAL ZONING MAP DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING 0.27 ACRES, MORE OR LESS, AND GENERALLY LOCATED ON THE SOUTH SIDE OF MULBERRY STREET, APPROXIMATELY SIXTY FEET EAST OF THE INTERSECTION WITH FORREST AVENUE, IN COCOA, FLORIDA, MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO, FROM CORE COMMERCIAL DISTRICT (C-C) TO MULTIPLE FAMILY DWELLING DISTRICT (RU-2-25); PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.**

Mr. Smith noted that this was a cleanup on the zoning map and showed both the zoning map and location map. Both staff and the Planning & Zoning Board recommend approval.

This portion of the public hearing was closed to the Council and opened to the public.

Eric Ladd, Cocoa resident, lives on the corner and a location map was not included with their notification of this meeting. He advised that the information that came in the letter will overlap their property.

In response to his concerns, Mr. Smith stated that the distance would not affect this and the parcel is the only thing affected and it is based off of the Property Appraiser's site. He reiterated that the property owner was initiating this request.

There being no further response, the public portion of the hearing was closed and returned to Council.

Councilmember Goins asked about the overlapping issue and confirmed that another person's zoning cannot dictate what your zoning is. In response, City Manager Whitten confirmed he was correct and this is the legal description codified with the Property Appraiser.

Councilmember Koss stated that you want complimentary zoning so she understands his concerns. Mr. Smith spoke on this in furtherance.

* **MOTION by Mayor Blake; Seconded by Councilmember Goins, to approve Ordinance No. 04-2023 on First Reading.**

**AYES: Blake, Hearn, Dyal, Goins**
**NAYES: Koss**

**THE MOTION CARRIED (4-1)**

Attorney Garganese pointed out that the property information is on the deed that was submitted by the applicant.

## VII. Council Business:

1. Accept the Annual Comprehensive Financial Report (ACFR) and the Audit Report for Fiscal Year 2022. (23-204). (Finance Director)

Ms. Bowman announced that they have an audit every year and she explained what the audit process entails. There were no issues with the audit and Mr. Joel Knopp provided a brief overview to Council.[4]

Mr. Knopp thanked Council and stated that there were no internal issues. He mentioned the financial statements and that it was an Unmodified Opinion. There were also no current year findings on internal control over financial reporting and on compliance or other matters.

[4] EXHIBIT B: ACFR & Audit Report for FY 2022

He provided financial highlights including a City-Wide analysis, the General Fund, General Fund Budget and the Proprietary Fund.

Mr. Knopp voiced his appreciation for Ms. Bowman and her team.

Mayor Blake thanked him.

* **MOTION by Councilmember Dyal; Seconded by Deputy Mayor Hearn, to approve the item.**
**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

2. Approve the Interlocal Agreement between the Cocoa CRA and the City of Cocoa pertaining to Community Policing in Cocoa Village and authorize the Mayor to sign the agreement. (23-252). (Community Services Director)

Ms. Neuterman advised that this was a part of the FY 23 budget and provided a history on the adoption of Ordinance No. 14-2022. She further provided a brief background of the interlocal agreement.

Aleck Greenwood, Cocoa resident, was supportive of this and believes it is an asset to have this downtown; however, he also believes the noise issues needed to be addressed in the downtown area and explained his reasonings why.

Councilmember Goins feels they did good by listening to the community and dealing with safety. Cocoa's downtown has more of a night life now and this is a good thing. As things change they need to adapt to the changes.

* **MOTION by Councilmember Goins; Seconded by Deputy Mayor Hearn, to approve the item.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

3. Council discussion regarding Accessory Structure setback requirements. (23-262). (Public Works Director)

Mr. Smith provided background on this item as well as information from the Code.

He explained the proposed changes and why they were being included. He stated staff was looking for direction and hoping to take this to the June Planning & Zoning meeting.

Pat Stewart, McFarland Drive, advised that she would like to place a shed in her backyard and asked why her lot was treated differently. In response, Mr. Smith

explained why corner lots have a setback instead of interior lots. She feels that this has been a very disappointing process in trying to get approval by the City of Cocoa.

City Manager Whitten clarified that the setbacks are the same for the whole City. In response, Mr. Smith advised in the affirmative and noted if it is a corner lot with the same zoning.
Deputy Mayor Hearn asked if the changes would allow sheds to be attached to the home. In response, Mr. Smith advised you could not attach it but it could be adjacent. It would still have to go through the building permit review.

Mr. Smith added that they could include safety wording as well. Chief Lamm spoke on the safety issues and advised that the City would not have much of a say so in regards to how close a shed can be to a house.

Kirk Pasqualle, Cocoa, had a shed built in 2020 and it is a necessity because they do not have a garage or carport. Mr. Smith explained the protocol that they would need to do.

Councilmember Koss advised that this item came up because the Pasqualle's tried to get this permitted and it was going to cost $1,200 to go before the Board of Adjustment. He is concerned about those fees and asked if this would come back before Council.

Mr. Smith announced that in addition to setbacks, there are other items they wanted to address and clean up in the code as well. Costs will still need to be covered at an administrative level.

City Manager Whitten confirmed that if the Stewarts did not want to wait they could go to the Board of Adjustment for a variance. That could happen as soon as May; however, fees aside they could wait on the ordinance change.

Ms. Stewart advised that she will wait as they have already waited for six months.

Monica Pasqualle, Cocoa, asked if there could be a grandfathering clause into the ordinance for properties built so long ago.

Further discussion was held on this issue.

* **MOTION by Councilmember Koss; Seconded by Councilmember Dyal, to approve staff's recommendation.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

4. Requesting the Renaming of Travis Park to "Travis Recreation Center @ Clearlake Park". (23-277).(Councilmember Koss)

Councilmember Koss provided a brief history on how this item came about. She spoke about you get and create “place”. A map was shown of the educational hub of Cocoa. She believes this area is on the upswing and that reclaiming the name of Clear Lake Park does not take away from the Travis name.
Councilmember Dyal voiced his objection as it is not a “clear” lake anymore. He does not see the need to change the name of a park that has history in this town.

Mac Osborne, Cocoa resident, does not understand the purpose of bringing the name Clearlake back into it. There is a lot of history there and he is against this.

Councilmember Koss asked if he would approve the change to “Travis Park at Clear Lake”.

Marlene Weiss, Cocoa resident, provided a presentation and a history of the area. She shared several historical articles in regards to the area. Additionally, a petition was signed by three hundred residents who support the name change.

Linda Dolphin, Cocoa resident, was in attendance to support Ms. Weiss and Councilmember Koss in the renaming of the park.

Councilmember Goins advised that he was initially in support of this due to an email sent by Mr. Osborne. He would never want to disrespect a family and does not understand the email they received versus what Mr. Osborne stated of being against this. Based on what Mr. Osborne stated he is changing his mind and if Mr. Osborne, as a family member, does not support this, then neither does he.

Deputy Mayor Hearn agreed and was originally in support as well. After hearing this he does not want to disrespect family roots.

Councilmember Koss asked if they were opposed to signage that said “Travis Park at Clear Lake”.

She further mentioned that councilmembers that came before them invested in Clear Lake and all of those areas could be an investment to the City. This is a vital center for Cocoa and there have been numerous community meetings in regards to this.

*** MOTION by Mayor Blake; Seconded by Councilmember Goins, to table this so that staff can sit with Mr. Osborne and sort this matter out.**

**AYES: Blake, Goins, Dyal**
**NAYES: Hearn, Koss**

**THE MOTION CARRIED (3-2)**

## VIII. City Business:

1. Approval of City of Cocoa and LIUNA Memorandum of Understanding regarding modified pay plan and wages. (23-260). (Administrative Services Director)

* **MOTION by Mayor Blake; Seconded by Councilmember Goins, to approve the item.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

2. Acceptance of the Brevard County District 4 Parks and Recreation Capital Improvements Projects for Fiscal Year 2024 as they related to the City of Cocoa. (23-268). (Public Works Director)

* **MOTION by Mayor Blake; Seconded by Councilmember Goins, to approve the item.**

Mr. Smith explained the improvements in detail and after a question was posed by Councilmember Goins regarding a bathroom at Travis Park, Mr. Smith pointed out that was an unfunded priority.

He further advised that it would be three projects and they would all be done at Stradley Park, there would not be any done at Travis Park.

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

3. Approve a Resolution Amending the FY23 Budget, BAF 23-066-T1 and T2, to transfer funds from Operational accounts to Capital funds for the Design and Fabrication of a SWAT van in the amount of $62,976, Approve a Resolution to Waive Competitive Bidding, and to approve the Service Agreement with Pride Enterprises. (23-239). (Chief of Police)

Deputy Mayor Hearn felt it was important for the public to know that they support the police officers.

* **MOTION by Deputy Mayor Hearn; Seconded by Mayor Blake, to approve the item.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

**Multi-Year Contracts:**

**None.**

## IX. Informational Agenda:

1. Review the cumulative purchase approvals over $35,000 and under $50,000 for period 10/01/2022 to 3/31/2023. (23-232). (Finance Director)

2. FY 2023 Budget Adjustment Report. (23-249). (Finance Director)

3. Data showing the relation between the estimated and actual income and expenses to date. (23-250). (Finance Director)

4. Approved change orders to construction contracts that the City Council has authorized the City Manager, by resolution, to approve in excess of the City Manager's spending authority. (23-251). (Finance Director)

## X. Reports:

City Manager Whitten announced that at the first Council meeting of May two members of Council will not be in attendance. He asked if Council would like to change or cancel that meeting.

* **CONSENSUS AMONG COUNCIL TO CANCEL THE MAY 9, 2023 CITY COUNCIL MEETING. THE NEXT MEETING WILL BE MAY 23, 2023.**

City Manager Whitten further mentioned that the Finance Department has once again received the Distinguished Budget Presentation Award from the Government Finance Officers Association. He applauded Ms. Bowman and her team.

Lastly, he pointed out that Lt. Ondo was sitting in for Chief Collier tonight as he and Commander Dovale are at an Officer of the Year Banquet in support of Officer Baylis.

Ms. Neuterman shared that on April 21st they had a Habitat for Humanity Rock the Block in Diamond Square where they cleaned up the area. Students and staff from EFSC, board members, etc. helped with the clean-up.

Ms. Senger thanked everyone who painted rain barrels for the Arbor Day event. They raised $710 for Cocoa PAL it was a very good event.

Chief Lamm recommended that the burn ban be lifted due to the current weather status. He strongly encouraged all to check setbacks when doing open burning. Chief Lamm addressed Mr. Kamus' comment under delegations and stated that there are booster lines on the trucks. There is also more appropriate equipment on the trucks to help them do the jobs they need to do.

Councilmember Dyal attended the Chief's Walk in Districts 3 and 4 and it was a good time. Citizens were glad it was held there.

He thanked Chief Lamm for allowing him to take out the antique fire truck. Photos were shown of the Brittany's Wish Foundation event at Pint and Pistols.

Councilmember Koss shared that this Friday is the last concert at EFSC in the Simpkins Fine Arts Center. She has free tickets if anyone is interested. It is the orchestra spring concert and includes members of the community as well.

She thanked staff and pointed out the benefits of the trees.

Deputy Mayor Hearn attended the Arbor Day event and enjoyed it. He further spoke of the City's recognition by the Cocoa High School Quarterback Club of which he will bring to the next meeting. They have a Hey Blue! Event on May 2nd and he is looking forward to it.

Councilmember Goins showed photos of a property behind Aurora Street that is not being maintained. The ditch is overgrown and spoke about other concerns with the property. Photos were shown of right of ways not being cut by residents. Lastly, he gave a shout out to the scholars at Emma Jewel Charter Academy who donated their time with painting rain barrels.

Mayor Blake thanked everyone for attending the meeting. He showed photos of his attendance at the Brightline Orlando Station unveiling, the Jackson Kia ribbon cutting, Trash Bash, Rock the Block, and the Arbor Day event.

He reminded all to buy local, spend local, and keep it local.

## XI. Adjournment:

*** MOTION by Councilmember Dyal; Seconded by Mayor Blake, to adjourn the Regular meeting of April 25, 2023.**

**AYES: Blake, Hearn, Dyal, Goins, Koss**

**THE MOTION CARRIED UNANIMOUSLY (5-0)**

**The meeting adjourned at 9:53 p.m.**

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**Michael C. Blake, Mayor**

**ATTEST:**

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**Carie Shealy, MMC, City Clerk**

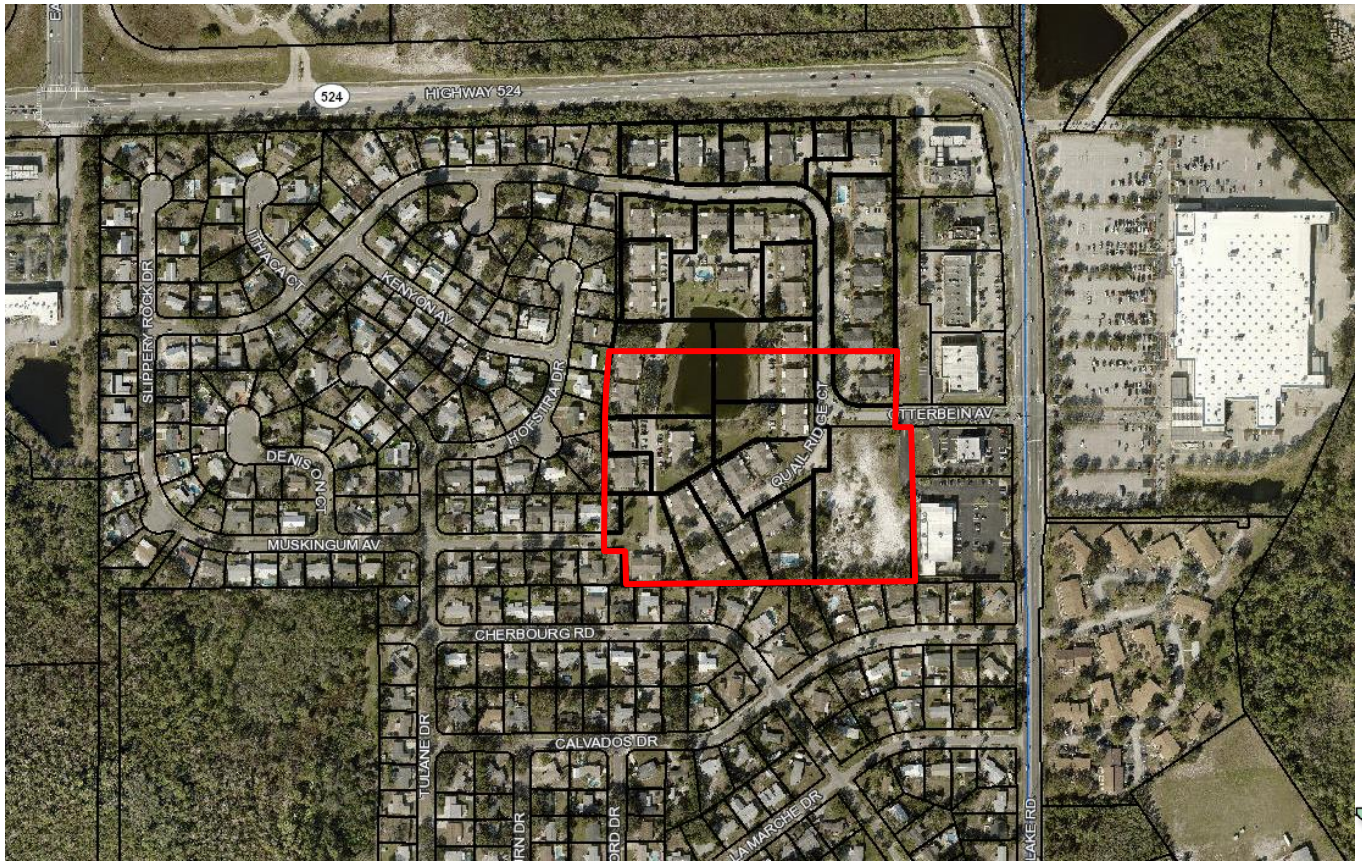
# PZ-23-02100002 – Consideration Zoning Map Amendment (Ordinance 03-2023)

- Consideration of a Zoning Map Amendment to change the zoning designation of approximately 11.59 acres and 77 parcels from Commercial Neighborhood (C-N) to Multiple Family Residential (RU-2-15)
- This request is to correct a conflict between the current zoning and the Future Land Use, which is Medium Density Residential
  - C-N is not an allowed zoning district within that land use classification
- The requested zoning is consistent with the surrounding uses and zoning districts
- **Both C-N and RU-2-15 allow multiple family residential**
  - **A correction to the Zoning or Land Use would still allow for Multifamily**
  - **RU-2-15 is a appropriate zoning category because of the existing multifamily within the Quail Ridge Condominiums**

EXHIBIT A: Presentation re: Items VI.2; VI.3; VI.4; and VII.3

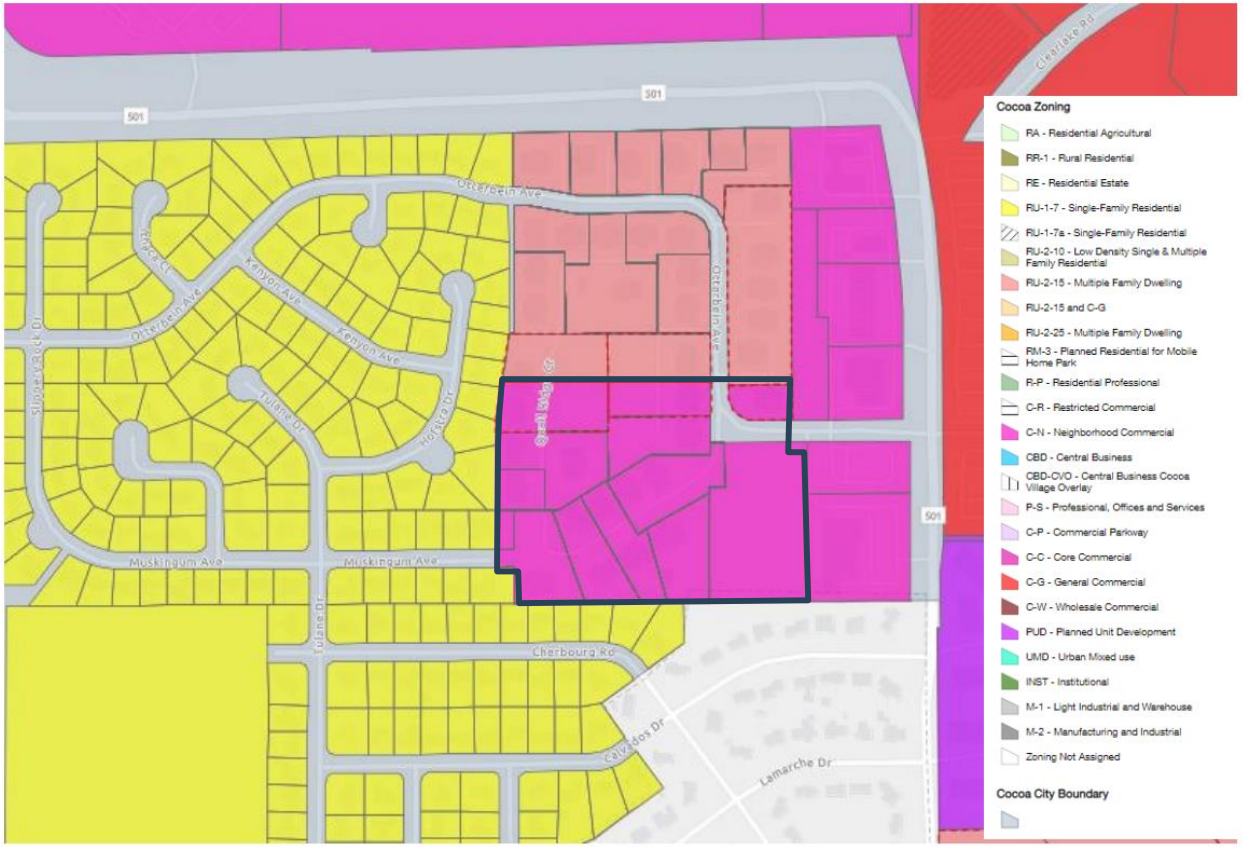
# PZ-23-02100002 – Consideration Zoning Map Amendment (Ordinance 03-2023)

- Location Map:



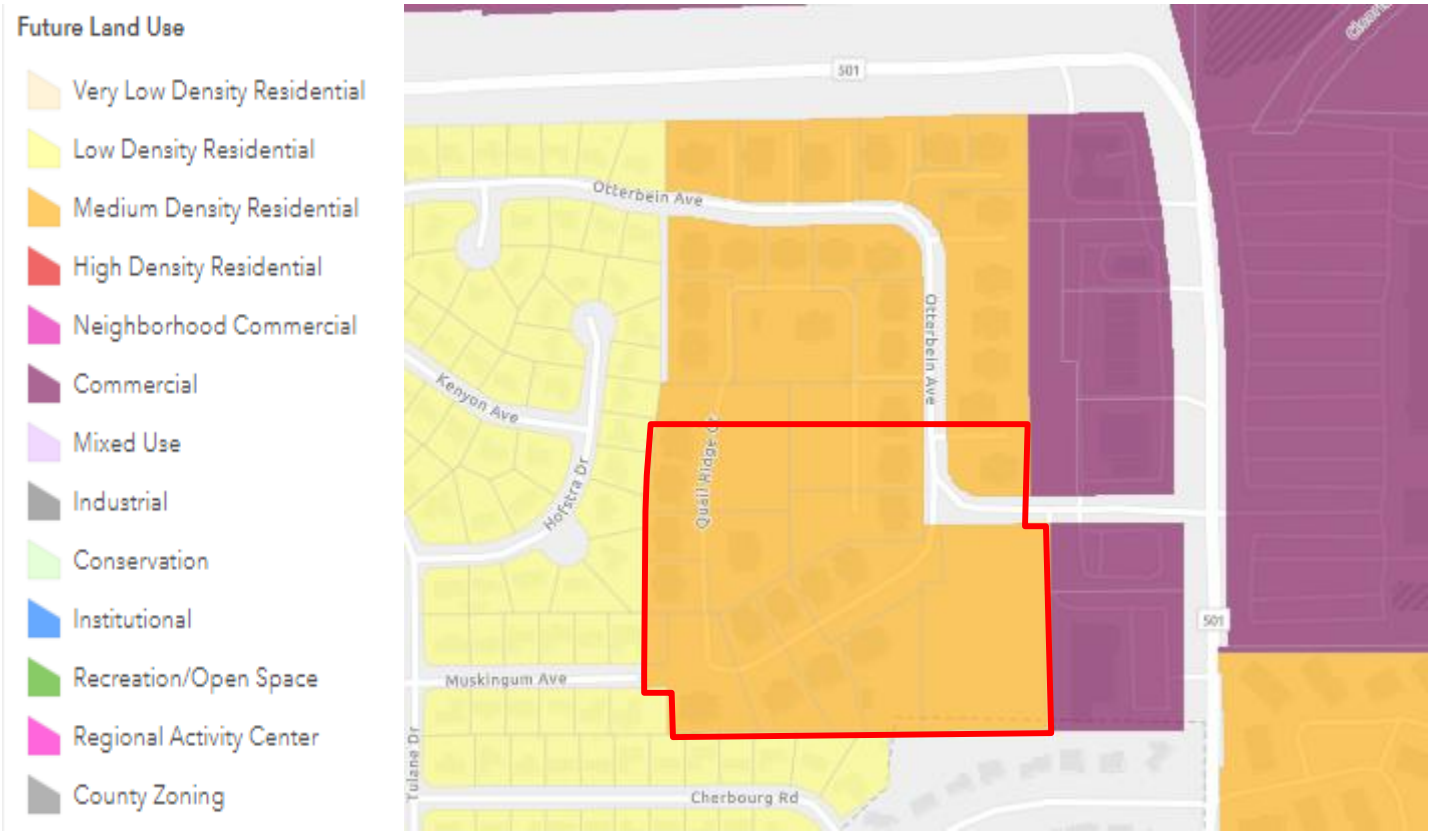
# PZ-23-02100002 – Consideration Zoning Map Amendment (Ordinance 03-2023)

- Zoning Map:



# PZ-23-02100002 – Consideration Zoning Map Amendment (Ordinance 03-2023)

- Future Land Use Map:



# PZ-23-02000001 – Consideration of Staff Requested Zoning Text Amendment (Ordinance 02-2023)

- **Currently, Gym and Fitness Facilities are only allowed within the Central Business District and Urban Mixed Use District**
- There are currently several of these facilities in other zoning districts where they are not permitted and staff has received interest from other parties wishing to create new gym and facilities in the City
- Staff reviewed the City's zoning districts to determine the which one may be appropriate for the gym and fitness use. Limitations on square footage were also included as necessary.

# PZ-23-02000001 – Consideration of Staff Requested Zoning Text Amendment (Ordinance 02-2023)

- Gym and fitness facility: a privately-owned, indoor establishment offering individuals or groups the ability to engage in exercise or sport related activities for the purpose of physical fitness, health, and recreation, whether or not on a membership basis. This use may include indoor gymnasiums, gymnastics centers, dojos, exercise or dance studios, yoga studios, or similar facilities where individuals may engage in regular physical activities including exercise, sports, or recreation. This use may also include incidental accessory uses such as food and beverage sales, game courts, locker rooms, training facilities, and/or saunas. This term does not include indoor playgrounds or play areas primarily designed for children

# PZ-23-02000001 – Consideration of Staff Requested Zoning Text Amendment (Ordinance 02-2023)

- Summary of Proposed Changes:

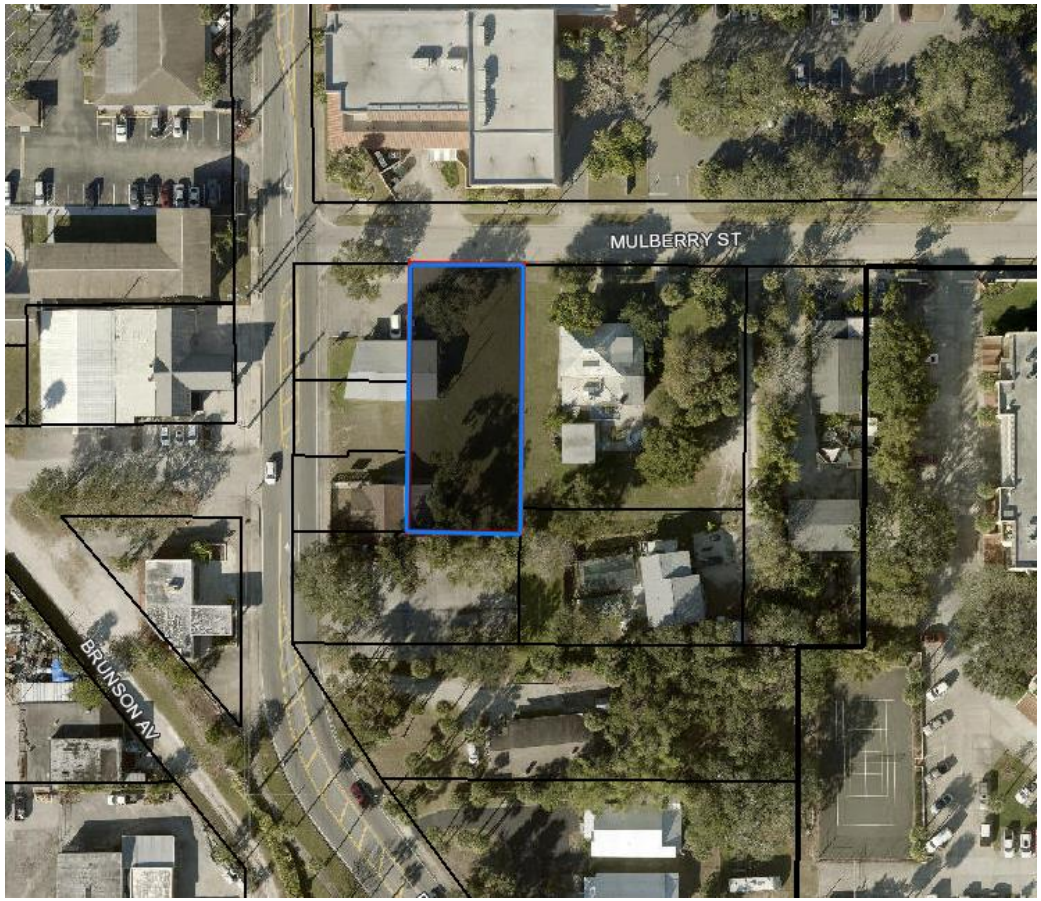
| District | Appendix A Article XI Section # | Current Status of Gym and Fitness Facilities | Proposed Change |
|---|---|---|---|
| CR | 10A | Not allowed | Permitted < 7500sqft Special Exception > 7500sqft |
| CN | 11 | Not allowed | Permitted < 7500sqft Special Exception > 7500sqft |
| CG | 12 | Not allowed | Allowed as permitted use any size |
| CBD | 13 | Allowed as principal use; no size restriction | Allowed as principal use; must be < 7500sqft |
| CP | 15 | Not allowed | Allowed as permitted use any size |
| CW | 15 | Not allowed | Allowed as permitted use any size |
| *M-1* | 16 | Not allowed | *Will be allowed any size as a result of cumulative zoning with C-W* |
| PUD | 17 | Not allowed | Allowed as permitted use any size |
| CWOD | 22 | Permitted use in certain subdistricts; no size restriction | Permitted in certain subdistricts < 7500sqft; newly added to North of Village and additional areas of King Willard |

# PZ-23-02100001 – Consideration of Applicant Requested Zoning Map Amendment (Ordinance 04-2023)

- Consideration of a Zoning Map Amendment to change the zoning designation of an approximately 0.27 acre parcel from Core Commercial (C-C) to Multiple Family Residential (RU-2-25)
- This request is to correct a conflict between the current zoning and the Future Land Use, which is High Density Residential
  - C-C is not an allowed zoning district within that land use classification
- The requested zoning is consistent with the surrounding uses, zoning districts, and would bring the property into conformance
- **Due to the lot characteristics of this parcel, only a single-family dwelling would be permitted**
  - Lot Width: 70' – 150' Required for Multifamily; 50' required for single family
  - Lot Area: 11,870 SF – 15,000 required for Multifamily; 5,445 for single family

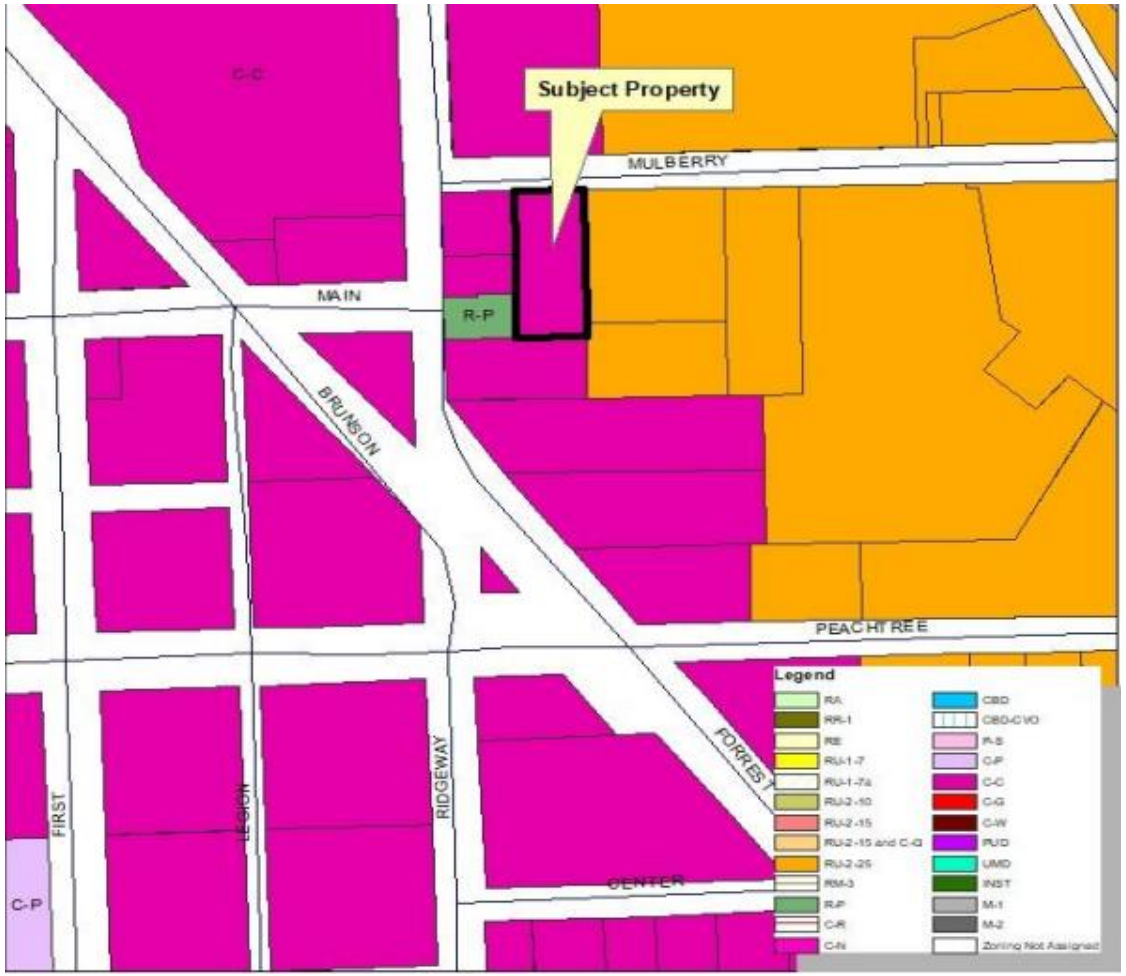
# PZ-23-02100001 – Consideration of Applicant Requested Zoning Map Amendment (Ordinance 04-2023)

- Location Map:



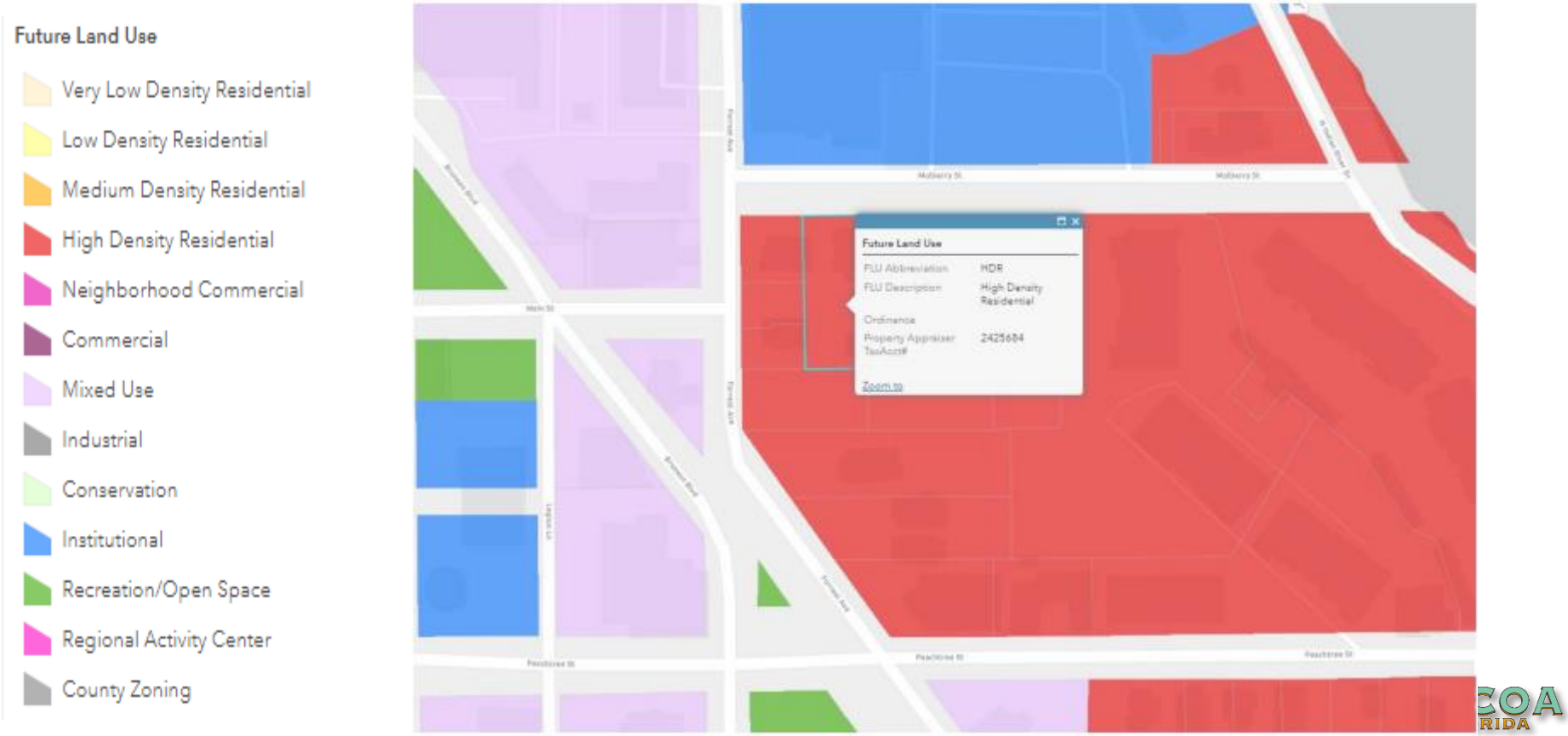
# PZ-23-02100001 – Consideration of Applicant Requested Zoning Map Amendment (Ordinance 04-2023)

- Zoning Map:



# PZ-23-02100001 – Consideration of Applicant Requested Zoning Map Amendment (Ordinance 04-2023)

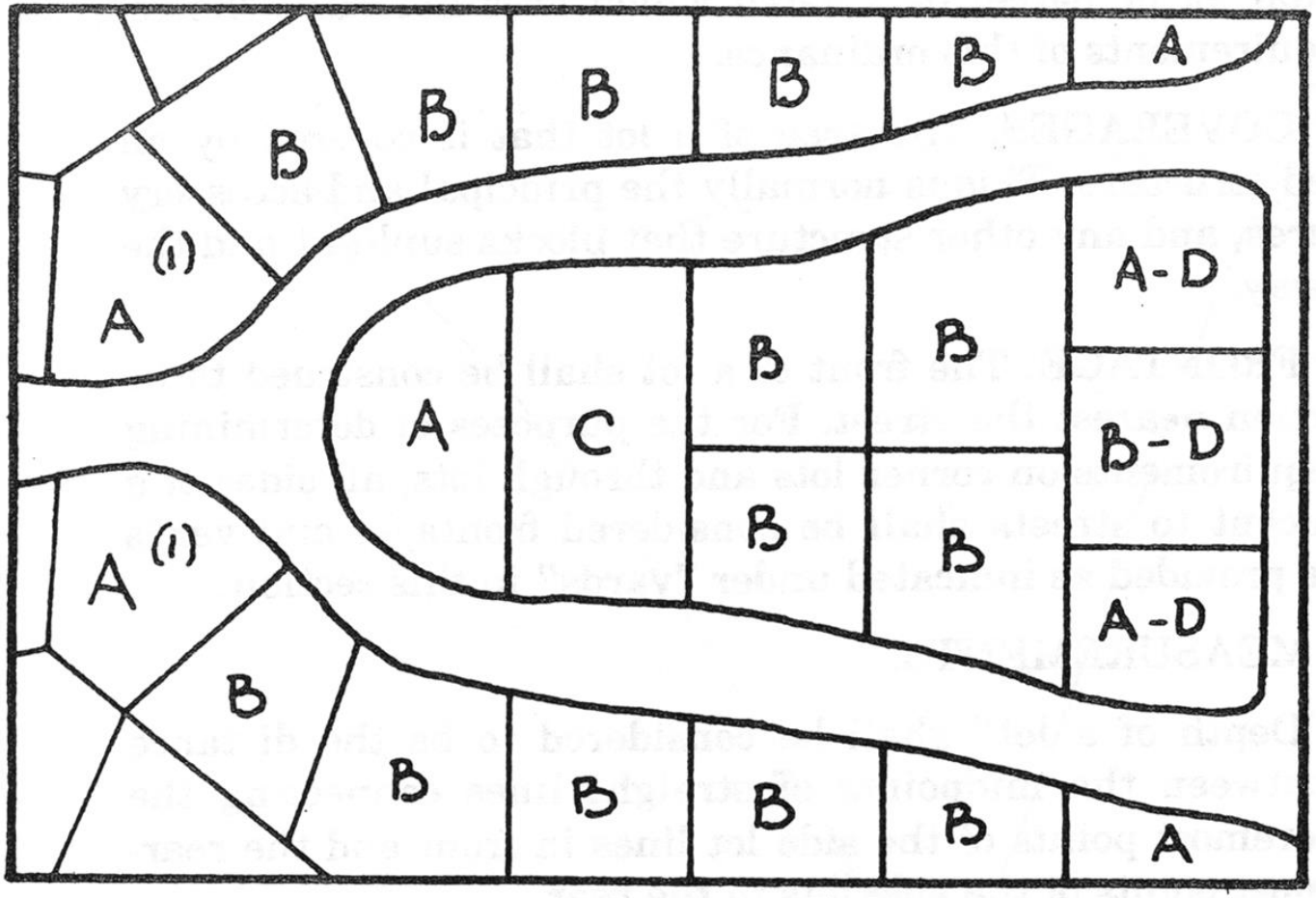
- Future Land Use Map:



# Council Discussion: Accessory Structure Setbacks

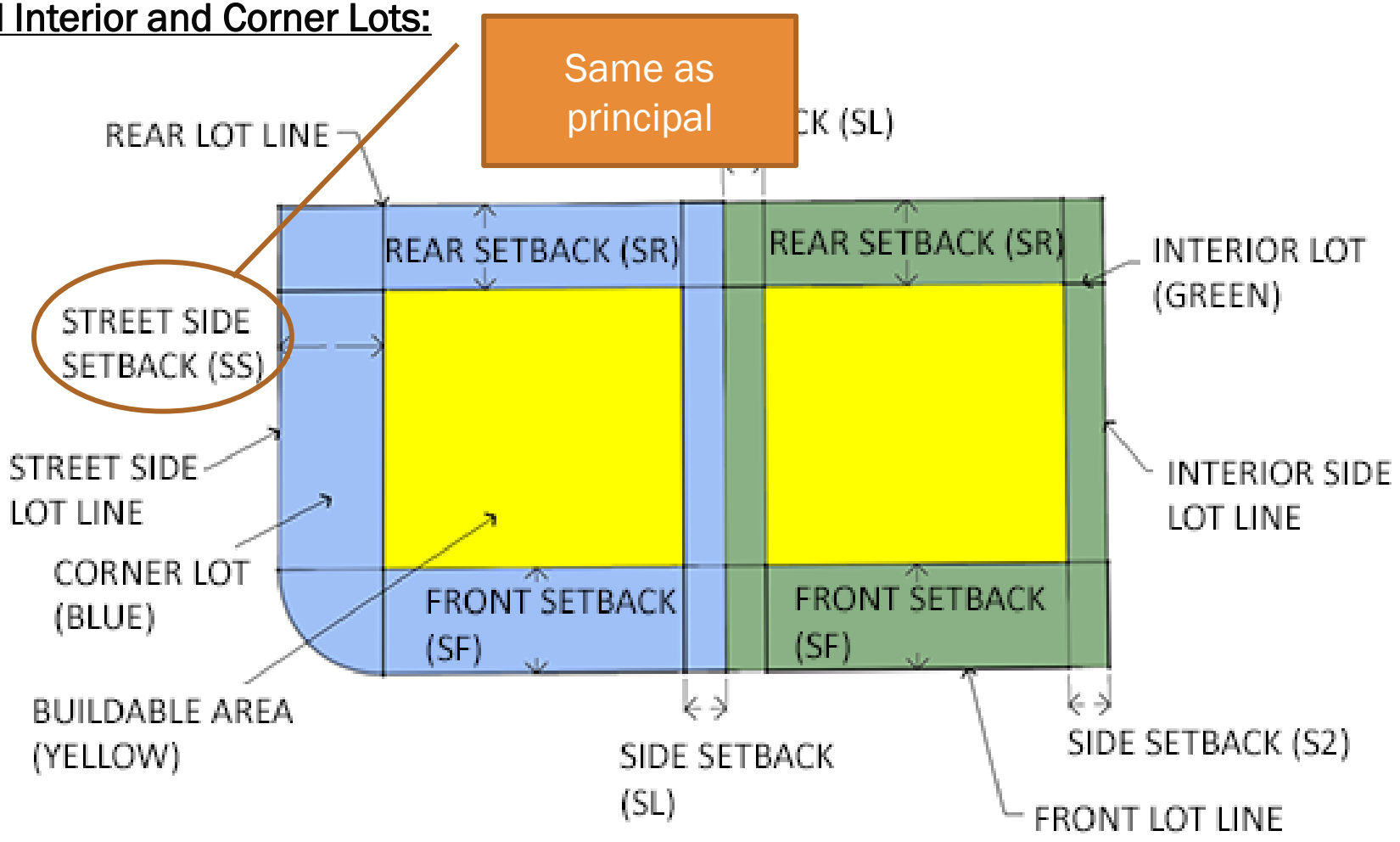
**Lot Types:**

A – Corner
B – Interior
C – Through Lot
D – Reversed Frontage



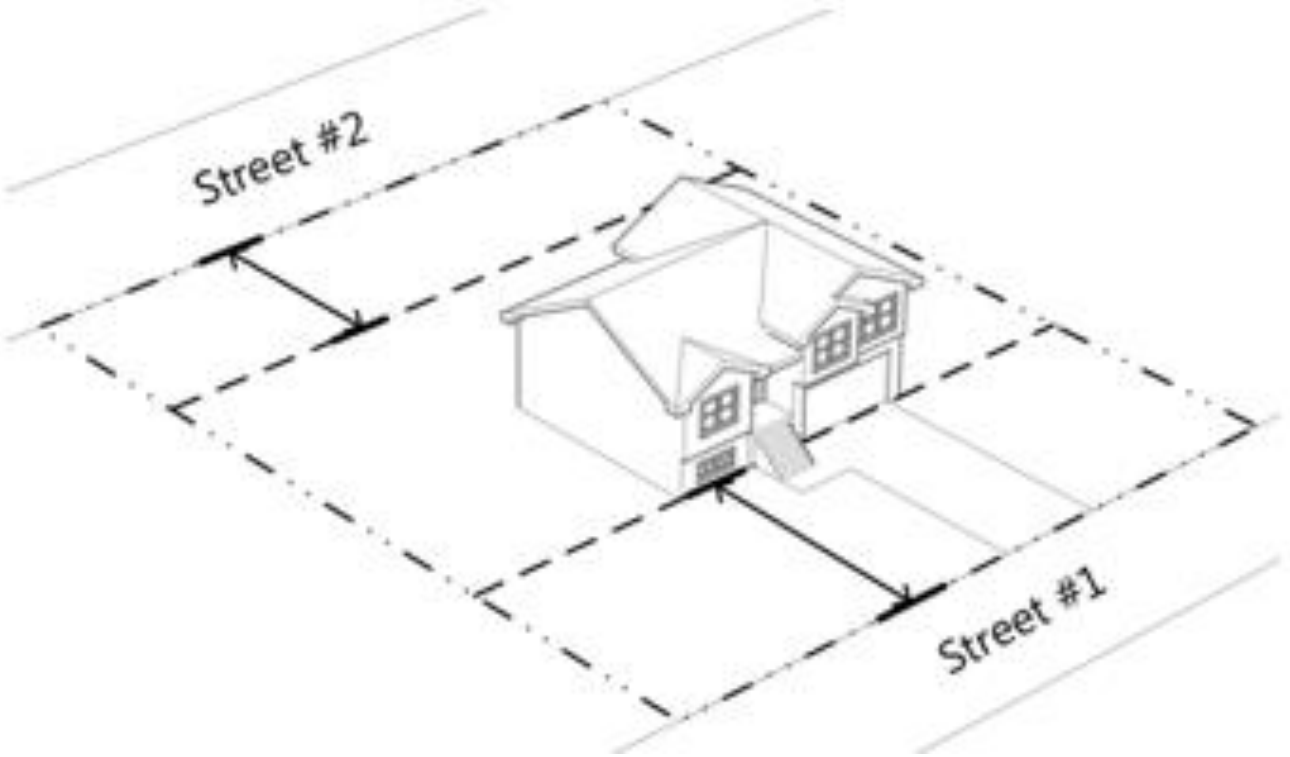
# Council Discussion: Accessory Structure Setbacks

Typical Interior and Corner Lots:



# Council Discussion: Accessory Structure Setbacks

Typical Through Lot




Front Yard Setback applies from both streets.

# Council Discussion: Accessory Structure Setbacks

- RU-1-7 is the most common zoning district:
  - Front – 25 FT
    - No accessory structure allowed
  - Side Interior – 8 FT
    - No accessory structure allowed
  - Side Corner – 15 FT
    - Applies to accessory structures as well.
  - Rear – 15 FT
    - Accessory structure rear setback can be reduced to 5' (but not within an easement)

- Proposed Changes:
  - Remove building-to-building setbacks within a lot (currently 10 FT)
  - Clarify language regarding through lots
  - Clarify language regarding corner lots
  - Clarify Home-based Businesses per FS. 559.955

EXHIBIT B: ACFR & Audit Report for FY 2022

# CITY OF COCOA, FLORIDA

Required Auditor Communications
Fiscal Year Ended September 30, 2022

Presented by:
Joel Knopp, CPA
Shareholder

MSL
CPAs & ADVISORS



# AUDIT OVERVIEW

MSL

FLORIDA ROOTS. GLOBAL REACH.

# Required Communications



- Auditor Responsibilities
- Management Responsibilities
- Internal Controls and Compliance
- Significant Matters
- Management Representations
- Assigned Individual for Oversight
- Audit Schedule

# Services and Deliverables



## Auditor's Report on Financial Statements

- Unmodified opinion

## Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters

- No current year findings

# Services and Deliverables *(Cont.)*



## Auditor's Management Letter

- No management letter comments

## Independent Accountant's Report

- No investment compliance findings

# Services and Deliverables *(Cont.)*



Auditor's Report on Compliance for Each Major Federal Program and on Internal Control over Compliance and Report on Schedule of Expenditures of Federal Awards

- No compliance findings related to major grants
- No internal control over compliance findings related to major grants

MSL



# FINANCIAL HIGHLIGHTS

MSL

FLORIDA ROOTS. GLOBAL REACH.

# City-Wide Analysis



| | Governmental Activities | | Business-type Activities | |
|---|---|---|---|---|
| | 2022 | 2021 | 2022 | 2021 |
| Total Assets & Def Outflows | $129.2M | $115.4M | $352.8M | $341.3M |
| Total Liabilities & Def Inflows | $83.1M | $75.1M | $141.6M | $143.7M |
| Net Position: | | | | |
| Net Investment in Capital Assets | $38.7M | $35.7M | $147.6M | $144.1M |
| Restricted | 4.0M | 1.5M | 37.6M | 33.1M |
| Unrestricted | 3.3M | 3.0M | 26.0M | 20.3M |
| Total Net Position | $46.0M | $40.2M | $211.2M | $197.5M |
| Unrestricted NP as a % of Total Expenses | 9.0% | 8.1% | 46% | 39% |
| Change in Net Position | $5.9M | $9.6M | $13.6M | $16.6M |

MSL

# General Fund



| | 2022 | 2021 |
|---|---|---|
| Total Assets | $42.9M | $36.3M |
| Total Liabilities & Def Inflows | $4.9M | $4.0M |
| Fund Balance: | | |
| Nonspendable | $0.3M | $1.6M |
| Restricted | 0.1M | 0.1M |
| Committed (includes stabilization fund) | 11.9M | 11.8M |
| Assigned | 12.2M | 8.6M |
| Unassigned | 13.5M | 10.1M |
| Total Fund Balance | $38.0M | $32.2M |
| Unassigned FB as a % of Total Expenditures and Transfers Out | 40.8% | 30.8% |
| Net Change in Fund Balance | $4.7M | $4.7M |

MSL

# General Fund Budget



| | Budget | Actual | Positive (Negative) |
|---|---|---|---|
| Total Revenues & Transfers In | $37.5M | $40.8M | 3.3M |
| Total Expenditures & Transfers Out | 44.9M | 35.0M | 9.9M |
| Net Change in Fund Balance | $(7.4M) | $5.8M | $13.2M |

MSL

# Proprietary Fund – Water and Sewer



| | 2022 | 2021 |
|---|---|---|
| Total Assets & Def Outflows | $345.0M | $334.4M |
| Total Liabilities & Def Inflows | 140.7M | 143.0M |
| Net Position: | | |
| Net Investment in Capital Assets | 142.9M | 139.3M |
| Restricted | 37.1M | 32.6M |
| Unrestricted | 24.3M | 19.4M |
| Total Net Position | $204.3M | $191.3M |
| | | |
| Total Operating Revenues | $75.8M | $70.6M |
| Total Operating Expenses | 51.5M | 46.9M |
| Operating Income | $24.3M | $23.7M |

MSL

# Questions or Comments



# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-293 | **Version:** | 1 | **Name:** | |
| **Type:** | Awards/Presentations | | | **Status:** | Agenda Ready |
| **File created:** | 5/2/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Update on "Mission Space Coast" by the Economic Development Commission of Florida's Space Coast. (Angela Neal, Director of Special Projects) | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 30, 2023
Agenda Date: June 6, 2023
Prepared By: Carie Shealy, City Clerk
Through: Stockton Whitten, City Manager
Requested Action:
Update on "Mission Space Coast" by the Economic Development Commission of Florida's Space Coast.

## BACKGROUND:

Ms. Angela Neal, the Director of Special Projects with the Economic Development Commission of Florida's Space Coast will be providing an update on Mission Space Coast, the unified branding initiative for Brevard County.

## STRATEGIC PLAN CONNECTION:

na

## BUDGETARY IMPACT:

na

## PREVIOUS ACTION:

na

**RECOMMENDED MOTION:**

Update on "Mission Space Coast" by the Economic Development Commission of Florida's Space Coast.



powered by Legistar™

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-314 | **Version:** | 1 | **Name:** | |
| **Type:** | Contract | | | **Status:** | Consent Agenda |
| **File created:** | 5/11/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Approve a Resolution to Waive Competitive Bidding, by way of Sole Source to Southern Sewers Inc of Orlando Florida for the repairs to the VACCON Jet -Vacuum Cleaner Truck System and authorize the City Manager to issue the purchase order. (Public Works Director) | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | Resolution to Waive Competitive Bid repairs to VACCON DEBRIS TANK.pdf<br>Vac-Con Sole Source 3 Locations 10.05.20.pdf<br>2ND UPDATED QUOTE# 11133A.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 8, 2023
Agenda Date: June 6, 2023
Prepared By: Tony Jones, Fleet Manager
Through: Bryant Smith III P.E., Public Works Director / City Engineer
Requested Action:
Approve a Resolution to Waive Competitive Bidding, by way of Sole Source to Southern Sewers Inc of Orlando Florida for the repairs to the VACCON Jet -Vacuum Cleaner Truck System and authorize the City Manager to issue the purchase order.

## BACKGROUND:

The Public Works Stormwater Department owns and operates a 2014 VACCON Sewer/Stormwater high water pressure jet and vacuum system. This system is mounted on a 2021 Mack GR64F Cab & Chassis. In 2022 the 12-yard debris tank was showing signs of rust deterioration on the inner walls of the tank. A steel liner was installed as a temporary repair until a new debris tank could be budgeted. A quote was obtained from Southern Sewer Equipment Inc. The cost of a replacement tank was budgeted for in FY-2023 and the total estimated cost to replace the tank is $68,809.84. The tank is a VACCON specific custom factory tank that is designed and built by VACCON of Green Cove Spring Florida. Southern Sewer Equipment Inc. is the Sole Dealer for Sales, Parts & Service for the VACCON Factory in the State of Florida.

## STRATEGIC PLAN CONNECTION:

None.

## BUDGETARY IMPACT:

| | |
|---|---|
| Budgeted | Yes |
| If not budgeted, is amendment/transfer attached? | No |

| | |
|---|---|
| Amount Requested | $68,810 |
| Account Number | 423-3570-538.46-03 |
| Account Name | Repair & Maintenance of Vehicles |

## PREVIOUS ACTION:

None.

## RECOMMENDED MOTION:

Approve a Resolution to Waive Competitive Bidding, by way of Sole Source to Southern Sewers Inc of Orlando Florida for the repairs to the VACCON Jet -Vacuum Cleaner Truck System and authorize the City Manager to issue the purchase order.

**RESOLUTION NO. 2023-061**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, WAIVING THE COMPETITIVE BIDDING PROCESS AND SETTING FORTH THE BASIS OF THE CITY MANAGER'S RECOMMENDATION THEREOF BY EXHIBIT; PROVIDING FOR REPEAL OF PRIOR INCONSISTENT RESOLUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 2 of Article XIII of the City Charter of the City of Cocoa and Section 2-4 of the City Code of the City of Cocoa provides that competitive bidding is required for all purchases unless certain requirements are met for exceptions to the bidding requirement; and

**WHEREAS**, the City Manager has recommended that the competitive bidding requirement be waived for the purchase or public improvement described in Exhibit "A" attached to this resolution and by this reference incorporated herein; and

**WHEREAS**, the City Council has determined that competitive bidding for the purchase described in Exhibit "A" would not be in the City's best interest.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COCOA**, **BREVARD COUNTY, FLORIDA, that:**

**SECTION 1.** The purchase described in Exhibit "A" is hereby approved and the competitive bidding requirement is hereby waived. The basis for the City Manager's recommendation that a competitive bidding procedure would not be in the City's best interest is attached to this resolution and by this reference incorporated herein.

**SECTION 2.** All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 3.** This resolution shall become effective immediately upon adoption by the Cocoa City Council.

**ADOPTED** by the City Council of the City of Cocoa, Florida, in a Regular Meeting assembled on the 6th day of June, 2023.

_____

**Michael C. Blake, Mayor**

ATTEST:

_____

**Carie Shealy, MMC, City Clerk**

**EXHIBIT "A"**

To Resolution No. 2023-061

The City Manager recommends that the competitive bidding requirement be waived, by reason of sole source, to perform services related to replacing the 12-yard debris tank on Storm Water 2014 VACCON MODEL# V311SHA SER.#09115994 Jet-Rod Vacuum unit. The work will be performed by Southern Sewer Inc, the sole provider for Sales, Service and Parts for VACCON Sewer and Storm Water equipment in the State of Florida.

Supporting documentation has been provided toward justification of the waiver, based on sole source, as an exception to the sealed bidding process; and based on this documentation, I support approval of this resolution.

_____

Stockton Whitten
City Manager

October 05, 2020

To Whom It May Concern,

This letter will confirm that Southern Sewer Equipment Sales, located at…

3409 Industrial 27th Street
Fort Pierce, FL 34946

10575 General Drive
Orlando, FL 32824

8200 NW 58th Street
Doral, FL 33166

…is the sole authorized Vac-Con dealer for *municipal market* sales, parts, and service in the state of Florida for *combination and jetting units*. (*Excluding hydro-excavation equipment and the Florida Panhandle)*

Regarding warranties, parts warranties are only available on OEM parts purchased through an authorized Vac-Con, Inc. dealer. Warranties are non-transferable, and Vac-Con is not liable if someone has made any repairs to the unit other than Va-Con, it's dealers, or employees.

If you have any further questions, please do not hesitate to contact us.

Thank you,

Todd Masley
President, Vac-Con, Inc.

969 Hall Park Road,
Green Cove Springs, FL 32043
Tel: 904.284.4200 ● Fax: 904.284.3305
www.vac-con.com

# Southern Sewer Equipment Sales

# QUOTE

3409 Industrial 27th Street
Fort Pierce, FL 34946

1-800-782-4134

info@southernsewer.com

| DATE |
|---|
| 4/27/2023 |

| NAME / ADDRESS | NUMBER | 11133A |
|---|---|---|

CITY OF COCOA
ATTN: SUSAN (A/P)
65 STONE STREET
COCOA, FLORIDA 32922
(need tax cert)-(email invs:a/p- no mail)

| SALESMAN | P.O.#/REQ.# |
|---|---|
| BS | |
| TERMS | PHONE # |
| NET 10 DAYS | |

Ship To

CITY OF COCOA
301 SHEARER BLVD
COCOA, FL 32922

ATTENTION

**PLEASE REFER TO QUOTE NUMBER WHEN PLACING ORDER**

| QTY | ITEM | DESCRIPTION | EACH | Total |
|---|---|---|---|---|
| 0 | MILEAGE | DATE/TIME:10/27/2022<br><br>VAC-CON #09115994<br>MODEL #V311SHA/1000<br>IN SERVICE DATE:<br>FAILURE DATE: 12/06/2021<br>UNIT #:<br>MILEAGE:<br>PONY MOTOR:<br>CHASSIS HOURS:<br>VIN #:1FDZW82E6SVA75929 | 1.57 | 0.00 |
| | MECHANI... | DEBRIS TANK NEEDS TO BE REPLACED. | 0.00 | 0.00 |
| 1 | 711-12741 | DEBRIS TANK STRUCTURE ASSEMBLY | 28,040.08 | 28,040.08 |
| 1 | 711-12764 | DOOR STRUCTURE ASSEMBLY | 7,752.57 | 7,752.57 |
| 1 | 711-12776 | WEAR PLATE ASSY 5 TO 14 YD DIA REAR DOOR | 446.16 | 446.16 |
| 1 | 711-12826 | DOOR SEAL AY 72" DIA REAR DOOR | 406.99 | 406.99 |
| 1 | 711-12876 | DOOR SAFETY PROP ASSY-5-16 YD-REAR DOOR | 256.04 | 256.04 |
| 1 | 711-51441 | REAR DOOR HINGE ASSY ADJUSTABLE | 903.30 | 903.30 |
| 1 | 711-12984 | DEBRIS TANK SCREEN ASSEMBLY (ROUND STYLE) | 1,800.88 | 1,800.88 |
| 1 | 711-53365 | VACUUM BREAKER STRUCTURE ASSEMBLY | 3,372.72 | 3,372.72 |
| 1 | 711-38801 | INLET TUBE ASSEMBLY ROUND STYLE 12" WITH HOLDING BRACKET | 1,402.68 | 1,402.68 |
| 1 | 711-21703C... | FLOAT ARM ASSEMBLY 3-14 YARD UNITS (REPLACES 711-0238) | 441.82 | 441.82 |
| 1 | 711-3356 | HYD DOOR LOC ASSY. | 2,496.57 | 2,496.57 |
| 1 | 711-14793D | TANK DOOR LOCK HYD ASSY-DOOR HOLDER | 3,728.08 | 3,728.08 |
| 1 | 711-14426F4 | DEB TANK FLUSHOUT ASSY-TAND NO AIR PURGE | 1,217.90 | 1,217.90 |
| 1 | 711-12909 | 6" KNIFE VALVE ASSY VARIABLE A | 2,599.61 | 2,599.61 |
| 1 | 711-0063 | DOOR LOCK TEE HANDLE ASSY. | 134.44 | 134.44 |
| 1 | 692-8007 | DEBRIS TANK DECAL PKG | 185.00 | 185.00 |

**Total**

PRICES ARE SUBJECT TO CHANGE

FREIGHT NOT INCLUDED IN PRICING

CREDIT CARD PAYMENTS WILL NOT BE ACCEPTED ON INVOICES OVER $7500
A 25% RESTOCK WILL BE CHARGED ON ALL RETURNED ITEMS.

# Southern Sewer Equipment Sales

# QUOTE

3409 Industrial 27th Street
Fort Pierce, FL 34946

1-800-782-4134

info@southernsewer.com

| DATE |
|---|
| 10/27/2022 |

| NAME / ADDRESS | NUMBER | 11133A |
|---|---|---|
| CITY OF COCOA<br>ATTN: SUSAN (A/P)<br>65 STONE STREET<br>COCOA, FLORIDA 32922<br>(need tax cert)-(email invs:a/p- no mail) | | |

| SALESMAN | P.O.#/REQ.# |
|---|---|
| BS | |
| TERMS | PHONE # |
| NET 10 DAYS | |

| Ship To | |
|---|---|
| CITY OF COCOA<br>301 SHEARER BLVD<br>COCOA, FL 32922 | |
| ATTENTION | |

**PLEASE REFER TO QUOTE NUMBER WHEN PLACING ORDER**

| QTY | ITEM | DESCRIPTION | EACH | Total |
|---|---|---|---|---|
| 1 | PAINT | DEBRIS BODY ACCORDING TO SER # 09115994 | 6,000.00 | 6,000.00 |
| | | | | |
| 45 | LABOR | LABOR BY SOUTHERN SEWER: ESTIMATED @ THE ORLANDO SHOP. | 125.00 | 5,625.00 |
| | FREIGHT | SHIPPING | 2,000.00 | 2,000.00 |
| | NOTE | OTHER PARTS AND REPAIRS MAY BE FOUND WHEN DISMANTLED. IF OTHER NEEDED REPAIRS ARE FOUND ON YOUR EQUIPMENT, YOU WILL BE NOTIFIED AS SOON AS POSSIBLE. THIS IS NOT A COMPREHENSIVE LIST. | 0.00 | 0.00 |

**UPON REVIEWING THIS QUOTE, IF THERE ARE ANY QUESTIONS, PLEASE CONTACT US AT 1-800-782-4134.**

| | **Total** $68,809.84 |
|---|---|
| PRICES ARE SUBJECT TO CHANGE | FREIGHT NOT INCLUDED IN PRICING |

CREDIT CARD PAYMENTS WILL NOT BE ACCEPTED ON INVOICES OVER $7500
A 25% RESTOCK WILL BE CHARGED ON ALL RETURNED ITEMS.

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-321 | **Version:** | 1 | **Name:** | |
| **Type:** | Resolution | | | **Status:** | Consent Agenda |
| **File created:** | 5/15/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Approve a Budget Resolution, Amending the FY2023 Budget, BAF# 23-080-T in the amount of $231,146; Approve Change Order #1 for Elenis Contracting LLC/PO 80847 in the amount of $231,146; Approve Project Resolution Authorizing the City Manager to Issue Change Orders with a Total Project Contingency not to exceed $273,559 for the Dyal Ground Water Filter #3 Project (WS23DF). (Utilities Director) | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | 80847.pdf<br>Budget Resolution FY 2023- ADA Compliant.pdf<br>BAF 23-080-T-UT-Filter 3 (6-6-23) Agenda 23-321.pdf<br>Resolution Project Contingency Filter #3 WS23DF.pdf<br>Change Order Request #1 (PO 80847).pdf<br>Change Order #001 (WS23DF).pdf<br>GWF3 Submittal 2 (sov) updated 5-19-22.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 15, 2023
Agenda Date: June 6, 2023
Prepared By: Katherine D. Ennis, P.E., Deputy Utilities Director
Through: John A. Walsh, P.E., Utilities Director
Requested Action:
Approve a Budget Resolution, Amending the FY2023 Budget, BAF# 23-080-T in the amount of $231,146; Approve Change Order #1 for Elenis Contracting LLC/PO 80847 in the amount of $231,146; Approve Project Resolution Authorizing the City Manager to Issue Change Orders with a Total Project Contingency not to exceed $273,559 for the Dyal Ground Water Filter #3 Project (WS23DF)

## BACKGROUND:

On March 14, 2023 Council approved award of the project to Elenis Contracting LLC in the amount of $424,120. Council also authorized the City Manager to Approve and Execute Change Orders in an Amount Not to Exceed $42,412 (10% of the Contract Amount).

The dual media filters at the Dyal Water Treatment Plant are used to remove suspended solids from

water. The filters are cleaned periodically with water and air so that the media can be reused. With time, however, the media exhausts its removal capabilities and needs to be exchanged.

This project's original scope was for the replacement of the media, as well as parts of the underdrain system (the IMS caps), which have become clogged with sediment and scaling in filter #3. An inspection of the filter equipment was performed by the contractor and the manufacturer of the equipment (Leopold) once the exhausted media had been removed from the filter. It was determined that there is damage to the underdrains which will require replacement. This additional scope was not known at the time of bid.

The contractor has submitted a quote for the additional scope. The cost for this additional work is $231,146 which is greater than the current available contingency amount.

Staff is requesting approval of the budget resolution, project contingency resolution, and the approval of Change Order #1 in the amount of $231,146 for this work.

## STRATEGIC PLAN CONNECTION:

NA

## BUDGETARY IMPACT:

| | |
|---|---|
| Budgeted | Yes, Partial |
| If not budgeted, is amendment/transfer attached? | Yes |

BAF# 23-080-T

| | |
|---|---|
| Amount Requested | ($231,146) |
| Account Number | 424-4055-536.63-00, WS16MM |
| Account Name | Infrastructure |

| | |
|---|---|
| Amount Requested | $231,146 |
| Account Number | 424-4020-536.63-00, WS23DF |
| Account Name | Infrastructure |

If a P.O. Change Order is involved please complete the following:

Change Order Amount $231,146

Original Purchase Order 80847
Original P.O. Amount $424,120

For this Agenda Item note Prior Change Order Information:
Total number of change orders to date 0
Total amount in change orders to date $0

## PREVIOUS ACTION:

March 14, 2023 - Award Bid No. B-23-14-COC, Groundwater Filter #3 IMS Cap and Media Replacement, Project No. WS23DF to Elenis Contracting LLC of Poland, Ohio, in the Amount of $424,120; Approve a Resolution Authorizing the City Manager to Approve Change Orders in an amount not to exceed $42,413 (10% of the contract amount), for a total cost of $466,533; Approve a Resolution Amending the FY2023 Budget, BAF# 23-046-T; Authorize the City Manager to execute the Contract

## RECOMMENDED MOTION:

Approve a Budget Resolution, Amending the FY2023 Budget, BAF# 23-080-T in the amount of $231,146; Approve Change Order #1 for Elenis Contracting LLC/PO 80847 in the amount of $231,146; Approve Project Resolution Authorizing the City Manager to Issue Change Orders with a Total Project Contingency not to exceed $273,559 for the Dyal Ground Water Filter #3 Project (WS23DF)

SERVICE
CITY OF COCOA

# PURCHASE ORDER

City of Cocoa
65 Stone Street
Cocoa, Florida 32922
(321) 433-8844

THIS NO. 80847

MUST BE SHOWN ON DELIVERY TICKET, INVOICE, AND STATEMENT

VENDOR NO.: 10751
VENDOR FAX NO.:
VENDOR PH NO.: 330-518-8765

DATE 4/12/2023
DATE REQUIRED 9/30/2023

ELENIS CONTRACTING LLC
563 EDWARD LANE
CAMPBELL OH 44405

DELIVER TO:

City of Cocoa
DYAL WATER PLANT
28400 STATE RD# 520
(E. ORANGE COUNTY)
CHRISTMAS FL 32709

*Florida Sales Tax Exemption No. 85-8012621548C-8*

BUYER/REQ. #
CS 0000046212 F.O.B.
KCOMBS/SM/KE/4020

| Line# | Quantity | UM | Description | Unit Cost | Ext Cost |
|---|---|---|---|---|---|
| 1 | 424120.00 | SUM | CAP AND MEDIA REPLACEMENT<br>Bid No. B-23-14-COC Groundwater Filter #3 IMS Cap and Media Replacement. | 1.0000 | 424120.00 |
| | | | | TOTAL | 424120.00 |

1. Do not invoice prior to shipment.
2. Partial shipments must be covered by separate invoices.
3. The right is reserved to cancel order if not filled by specified date.
4. Acceptance of order includes acceptance of all terms, prices, delivery instructions, specifications and conditions.
5. **IMPORTANT: Invoices and packing slips must bear our Order No.**

ACCOUNT NUMBER

42440205366300

MAIL INVOICES TO:

City of Cocoa
Accounting Division
65 Stone Street
Cocoa, Florida 32922

or

E-MAIL INVOICES TO:

accountspayable@cocoafl.org

CITY OF COCOA

Purchasing Agent

# CITY OF COCOA PURCHASE ORDER TERMS AND CONDITIONS

1. **AGREEMENT**: Except as provided in Paragraph 22 below, this purchase order, including these terms, conditions, the referenced bid package, and the specifications hereto, constitute the sole and entire agreement between the parties hereto (hereinafter "Agreement" or "Purchase Order"). **Seller's acceptance of this Agreement is limited to the terms and conditions hereof and written confirmation, commencing performance, or making deliveries hereunder constitutes such acceptance, notwithstanding Seller's proposal or terms additional to or different from those set forth in this Agreement.** The Seller's quotation is incorporated in and made a part of this Agreement only to the extent of specifying the nature and description of the goods and services ordered and then only to the extent that such items are consistent with the other terms of this Agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any of the terms or conditions hereof. The Buyer is the City of Cocoa, Florida, (hereinafter referred to as the "City" or "Buyer").

**2. TIME IS OF THE ESSENCE:** Failure to perform services or deliver goods of the quality and quantity and within the time limit(s) specified by this Purchase Order shall, at the option of the City, relieve it of any obligation to accept and pay for such goods or services, including any undelivered shipments of goods. Upon failure to deliver as specified, the City may buy like goods or services elsewhere and charge the Seller with any increased cost or other loss incurred thereon, pursuant to applicable law, unless defective shipment of goods, or performance of defective services, as applicable, is agreed to by the City in writing. Any failure by the City to exercise its option with respect to any shipment of goods or performance of services shall not be deemed to constitute a waiver with respect to subsequent shipments of goods or performance of services. This provision is not in lieu of, and the City does not waive any remedies provided by law.

**3. WARRANTY:** With respect to services, Seller warrants unto the City that Seller has the competence and abilities to complete the services set forth herein. Seller will perform the services with due and reasonable diligence consistent with sound professional practices. With respect to goods, Seller warrants to City (a) that the goods shall be of the quality specified or of the test grade of their respective kinds if no quality is specified; shall conform to the specifications, drawings, samples and other descriptions contained herein, and to representations made by Seller or its representatives; be fit for City's particular purpose; and (b) that at the time the goods are accepted by the City, the goods shall have been produced, sold, delivered, and furnished in compliance with all applicable Federal and State laws, including but not limited to the Consumer Product Safety Act, the Federal Occupational Safety and Health Act, the Fair Employment Practices Act and the Equal Pay Act, and all applicable municipal: ordinances, regulations, rules, labor agreements, and working conditions to which the goods are subject, (c) that the goods furnished hereunder are free of any claims or liens of whatever nature whether rightful or otherwise of any person, corporation, partnership, or association.

**4. MODIFICATIONS:** Except as provided in Paragraph 22, this Agreement can be modified or rescinded only in writing and if signed by both parties, or their duly authorized agents.

**5. WAIVER:** The failure of the City to enforce any provision of this Agreement or exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in full force.

**6. CITY OPTIONS:** City reserves the right to change specifications and delivery dates. Any difference in price required by such changes shall be equitably adjusted and the Agreement shall be modified in writing accordingly. City further reserves the right to terminate all or part of the work to be performed pursuant to this Agreement. In such event, City shall be liable only for materials or work done within the authorization of this Agreement. In no event shall City be liable for incidental or consequential damages by reason of such termination.

**7. INDEMNIFICATION:** Seller agrees to protect, indemnify, save and hold harmless City, its elected and appointed officials, officers, attorneys, and employees, from and against all losses, costs and expenses and from and against all claims, demands, suits and actions for damages, losses, costs, attorney fees, expenses and from and against all liability awards, judgements, and decrees of whatsoever nature for any and all damages to property of the City or others of whatsoever nature and for any and all injury to any person (including death) arising out of or resulting from negligence of Seller, breach of this Purchase Order in the performance of services or the manufacture of goods, from any defect in materials or workmanship, from the failure of the goods to perform to its full capacity as specified in the Purchase Order, specifications of other data, or from the breach of any express or implied warranty.

**8. PATENT INDEMNIFICATION:** Seller represents and warrants that it has the right to use any and all intellectual property, either by licensure or ownership, that is supplied, indirectly or directly, under this Purchase Order. Further, the Seller agrees that the City is relying on this representation and warranty to issue this Purchase Order. Seller agrees to hold harmless and to defend City against any claims of patent or copyright infringement occasioned by the manufacturer, sale or use of material supplied under this Purchase Order and to indemnify City, and its elected and appointed officials, officers, attorneys, and employees, against any damages occasioned by such claims whether justified or unjustified.

**9. INSPECTION:** City shall have a reasonable time after delivery or performance within which to inspect the goods or services. Goods rejected will, at Seller's expense, be returned to Seller or otherwise disposed of as Seller shall reasonably request. The cost of inspection of goods or services rightfully rejected shall be charged to the Seller. If reasonable inspection disclosed that part of the goods received or services performed are defective or nonconforming, City shall have the right to cancel any shipped portion of the order or unperformed portion of the services. Payment for the goods or services on this Purchase Order prior to inspection shall not constitute acceptance thereof, and is without prejudice to any and all claims that City may have against Seller. The making or failure to make any inspection of, or payment for acceptance of, the goods or services, shall in no way impair City's right to reject nonconforming goods or services, recover damages or exercise any other remedy to which City may been titled; notwithstanding City's knowledge of the nonconformity, its substantiality or the ease of its discovery.

**10. TAXES:** The City government is a non profit operation and not subject to tax.

**11. CONTINGENCIES:** Performance of any obligation under this Agreement may be
suspended by either party. without liability, to the extent that an act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel or power, governmental laws, regulations, or orders, or any other cause beyond the reasonable control of such party, or labor trouble, strike, lockout or injunction (whether or not such labor event is within the reasonable control of such party) delays, prevents, restricts or limits the performance of this Agreement or the consumption, sale, use or end use of goods or services. The affected party shall invoke this provision by promptly notifying the other party in writing of the nature and estimated duration of the suspension period. At City's option, either the Agreement period shall be extended by the term of any such suspension, or the total Agreement quantity hereunder shall be reduced by the quantity not delivered or performed during the term of such suspension, and, in either event, the Agreement shall otherwise remain unaffected. In such event that Seller's performance is suspended for more than sixty (60) days during the term hereof, City may, at its option, terminate this Agreement upon written notice to the Seller.

**12. PRICE PROTECTION:** Seller warranties that the price(s) set forth herein are equal to the lowest net price, and the terms and conditions of sale as favorable as the price(s), terms and conditions afforded by the Seller to any other customer for goods or services of compatible grade or quality during the terms hereof. Should City be able to purchase goods or services of the same or comparable quality from another source at a lower delivered cost then in effect
hereunder, and City gives Seller written notice hereto, City may purchase such goods or services from such other sources at such lower delivered cost unless within fifteen days of receipt by Seller of said notice, Seller meets such lower delivered cost for such quantity of goods or services. Any quantity of goods or services so purchased from another source by City shall be deducted from the total quantity offered on this Agreement, but the Agreement shall otherwise remain unaffected.

**13. PACKAGING AND CARTAGE:** No charge will be allowed for packing, boxing or cartage unless agreed upon at the time of purchase, but damage to any goods not packed to ensure proper protection to same will be charged to Seller. City's order number and quantity shipped will be marked or tagged on each package. City's count will be accepted as final and conclusive on any shipment not accompanied by itemized packing slip. Delay in or non-receipt of packing lists, statements or invoices in the number of copies specified or errors or omissions of any of these will be just cause for withholding payment.

**14. HAZARD:** Seller shall notify City of any inherent hazard and applicable precautions and protective measures and provide any additional relevant information, including but not limited to Material Data Safety Sheets, for the goods being purchased herein.

**15. QUANTITY:** The quantities of goods or duration of services as indicated on the face hereof, must not be exceeded without prior written authorization from City. Excess quantities may be returned to Seller at Seller's expense.

**16. ASSIGNMENT:** No right or interest in this Agreement shall be assigned by Seller without the prior written permission of the City and no delegation of any obligation owed by either City or Seller shall be made without the prior written permission of either party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes.

**17. CHOICE OF LAW; VENUE:** The validity, interpretation, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Florida. In the event of any dispute under this Purchase Order, venue shall be in Brevard County, Florida for any state action and Orlando, Florida, for any federal action.

**18. PUBLIC RECORDS; RIGHT TO AUDIT RECORDS:** Written documents prepared by either the Seller or City in furtherance of this Agreement shall constitute a public record. Any such instrument maintained by Seller hereunder shall be delivered to the City upon request. The City shall also be entitled to audit the books and records of the Seller to the extent that such books and records relate to the performance of this Agreement. Such books and records shall be maintained by the Seller for a period of three (3) years from the date of final payment under this Agreement unless a shorter period is otherwise authorized in writing by the City.

**19. FISCAL YEAR FUNDING APPROPRIATION:** (a) Specified Period. Unless otherwise provided by law, a purchase order for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the purchase order and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the initial fiscal period of the purchase order. Payment and performance obligations for succeeding fiscal periods shall be subject to the annual appropriation by City Council. (b) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the purchase order shall be cancelled and the contractor shall be entitled to reimbursement for the reasonable value of any work performed to the date of cancellation.

**20. FAILURE TO EXECUTE PURCHASE ORDER:** Failure of the successful bidder to accept the Purchase Order as specified may be cause for cancellation of the award. In the event that the order is cancelled, the award may then be made to the second lowest responsive and responsible bidder, and such bidder shall fulfill every stipulation embraced herein as if he were the original party to whom the bid award was made, oral bids maybe rejected and made void by the City.

**21. INDEPENDENT CONTRACTOR:** The Seller shall perform the obligations of this Purchase Order as an independent contractor and under no circumstances shall it be considered as agent or employee of the City.

**22. OTHER RELATED AGREEMENTS:** In conjunction with, or prior to issuing this Purchase Order, the City may require the Seller to execute a full written agreement that is approved by the City Manager or City Council and executed by the City Manager or Mayor ("Master Agreement"). The Master Agreement shall take precedence over the terms and conditions set forth in this Purchase Order to the extent there are any conflicting terms and conditions. Otherwise, the Master Agreement and this Purchase Order shall be deemed supplemental to each other.

**23. SOVEREIGN IMMUNITY:** Nothing contained in this Purchase Order shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. The provisions of §768.28, Florida Statutes, and any other limitations or restrictions in the City's liability shall be deemed incorporated herein by this reference.

**24. INSURANCE:** If this Purchase Order requires the Seller to perform services on the City's premises or at any place where the City conducts operations, or requires the Seller to perform professional consulting services, the Seller shall request insurance coverage requirements from the City's Purchasing Manager. In circumstances where insurance is required by the City, Seller shall provide proof of insurance or insurance certificates with the City listed as an additional named insured prior to performing under this Purchase Order. Noncompliance with this Paragraph shall place the Seller in default and subject this Purchase Order to immediate cancellation.

25. **E-VERIFY:** Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, Seller shall register with and use the U.S. Department of Homeland Security's E-Verify system, https://e-verify.uscis.gov/emp, to verify the work authorization status of all employees hired on and after January 1, 2021. Seller shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Seller shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes. Seller shall provide a copy of all subcontractor affidavits to the City upon receipt and shall maintain a copy for the duration of the Agreement. Seller must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the Seller stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system. Failure to comply with this provision is a material breach of this Agreement, and shall result in the immediate termination of the Agreement without penalty to the City. Seller shall be liable for all costs incurred by the City securing a replacement Agreement, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable.

# RESOLUTION NO. 2023-059

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, AMENDING THE CITY OF COCOA BUDGET FOR FISCAL YEAR 2023; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City Council of the City of Cocoa adopted the final budget for the fiscal year commencing on October 1, 2022, and ending on September 30, 2023, at a Regular meeting held on September 27, 2022; and

**WHEREAS,** in accordance with Article XII, Section 5 of the City of Cocoa Charter, whereby the Council may, at any time by resolution, transfer any unused and unencumbered appropriation or portion thereof from one office or department to another; and

**WHEREAS,** the City Council deems it to be in the best interest of the City of Cocoa to amend its budget as provided in this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COCOA,** as follows:

**SECTION 1.** The 2022-2023 fiscal year budget shall be amended as detailed in the attached sheets.

**SECTION 2.** All prior resolutions or prior resolutions inconsistent with this resolution are hereby repealed to the extent of the conflict.

**SECTION 3.** This resolution shall become effective immediately upon its adoption by the City Council of the City of Cocoa, Florida.

**ADOPTED** by the City Council of the City of Cocoa, Florida, in a Regular Meeting assembled on the 6th day of June, 2023.

_____
Michael C. Blake, Mayor

ATTEST:

_____
Carie Shealy, MMC, City Clerk

# City of Cocoa Budget Adjustment Form FY 2023 - 23-080-T

SELECT ADJUSTMENT TYPE: BUDGET TRANSFER | REQUESTING DEPARTMENT #: UT | DATE PREPARED: 05/15/23

'FROM' ACCOUNT(S)

| ADJUSTMENT AMOUNT | ACCOUNT NUMBER | PROJECT NUMBER | ACCOUNT NAME | ORIGINAL BUDGET | AMENDED BUDGET | ADJUSTED BUDGET | UNENCUMBERED BALANCE |
|---|---|---|---|---|---|---|---|
| ($ 231,146) | 424-4055-536.63-00 | WS16MM | INFRASTRUCTURE | $ 0 | $ 0 | ($ 231,146) | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| ($ 231,146) | TOTAL | | | | | | |

'TO' ACCOUNT(S)

| ADJUSTMENT AMOUNT | ACCOUNT NUMBER | PROJECT NUMBER | ACCOUNT NAME | ORIGINAL BUDGET | AMENDED BUDGET | ADJUSTED BUDGET | UNENCUMBERED BALANCE |
|---|---|---|---|---|---|---|---|
| $ 231,146 | 424-4020-536.63-00 | WS23DF | INFRASTRUCTURE | $ 0 | $ 0 | $ 231,146 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 0 | | | | $ 0 | $ 0 | $ 0 | $ 0 |
| $ 231,146 | TOTAL | | | | | | |

REASON/JUSTIFICATION FOR ADJUSTMENT:

Costs associated with change order #1 for the Dyal Ground Water Filter #3 Project. The underdrains will have to be replaced in addition to the caps. The damage to the underdrains was unknown at the time of bid. This will be going to council on 6/6/23. Agenda 23-321

Council/Board APPROVAL REQUIRED? *YES* (●) *NO* ( ) *DATE APPROVED:* 06/06/23 *RESOLUTION #:* 2023-059

***City Council approval is needed for all transfers greater than $50,000 and transfers between Departments / Funds. All CRA adjustments are required to go their respective boards.***

| | | |
|---|---|---|
| 5/18/23 Katherine Ennis Digitally signed by Katherine Ennis Date: 2023.05.18 12:34:07 -04'00' | Lora Howell Digitally signed by Lora Howell Date: 2023.05.26 13:50:17 -04'00' | |
| Date Requestor's Signature | Date Finance Approval Signature | Date Finance Director's Signature |
| John "Jack" Walsh Digitally signed by John "Jack" Walsh Date: 2023.05.18 17:45:48 -04'00' | Lora Howell Digitally signed by Lora Howell Date: 2023.05.26 13:51:16 -04'00' | |
| Date Department Director's Signature | Date Deputy Fin. Director's Signature | Date City Manager's Signature |

***FINANCE USE ONLY:***

Date Entered: _____ Entered By: _____ Group #: _____

**RESOLUTION NO. 2023-060**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA; AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE CHANGE ORDERS TO THE PRIMARY CONSTRUCTION CONTRACT AND ANY ADDITIONAL SERVICE CONTRACTS RELATED TO THE COMPLETION OF THE PROJECT REGARDING THE DYAL GROUND WATER FILTER #3 PROJECT, PROJECT NO. WS23DF IN AN AMOUNT NOT TO EXCEED $273,559; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** Section 2-4 of the City Code provides that with respect to construction contracts approved by the City Council, the City Council may authorize by resolution the City Manager to approve change orders to the primary construction contract and any additional service contracts related to the completion of the construction project authorized by the City Council in excess of the spending authority limits under this section provided the amount is within the unexpended construction budget approved by the City Council for the project including any contingency funds approved by the City Council for said contract; and

**WHEREAS,** on March 14, 2023, the City Council authorized the City Manager to proceed with the Dyal Ground Water Filter #3 Project, WS23DF, subject to certain terms and conditions and budget adjustments approved by the City Council; and

**WHEREAS,** in conjunction with this authorization, the City Council desires to streamline the approval of change orders and any additional service contracts to the extent necessary in order to expedite the construction of the project; and

**WHEREAS,** the City Council deems it to be in the best interest of the City of Cocoa to authorize the City Manager to approve the aforementioned change orders and any additional service contracts consistent with the terms of this Resolution and Section 2-4 of the City Code even if said amounts exceed the City Manager's general spending authority approved by the City Council.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COCOA,** as follows:

**SECTION 1.**

(A) Pursuant to Section 2-4 of the City Code, the City Manager is hereby authorized to approve any change orders to the primary construction contract and any additional service contracts related to the construction project regarding the Dyal Ground Water Filter #3 Project, WS23DF, provided the total amount of approved change orders and any additional service contracts do not exceed the construction budget. The construction

budget is $424,120 and allows for a contingency in the amount of $273,559 set aside for possible change orders, for a total of $697,679 for the project. This grant of spending authority shall be interpreted and construed in accordance with the provisions of Section 2-4 of the City Code.

(B) Pursuant to Section 2-4 of the City Code, the City Manager shall also provide notice of any such approved change orders and any additional service contracts to the City Council in the form of an agenda item at the next scheduled City Council meeting or as soon as practicable thereafter.

**SECTION 2.** All prior resolutions or prior resolutions inconsistent with this resolution are hereby repealed to the extent of the conflict.

**SECTION 3.** This resolution shall become effective immediately upon its adoption by the City Council of the City of Cocoa, Florida.

**ADOPTED** by the City Council of the City of Cocoa, Florida, in a Regular Meeting assembled on June 6, 2023.

_____
Michael C. Blake, Mayor

ATTEST:

_____
Carie Shealy, MMC, City Clerk

# CHANGE ORDER REQUEST FORM

**SELECT CHANGE ORDER TYPE:**

- ☐ GENERAL
- ☑ CONSTRUCTION----------Assigned Project # Required: WS23DF
- ☑ CONSTRUCTION CONTINGENCY----Resolution # Required:
  Amount Approved: $42,413.00 Balance Remaining: $42,413.00
- ☐ TASK ORDER ----------Assigned Task Order # Required:
- ☐ TASK ORDER AMENDMENT-------Amendment # Required:

**Date:** 05/15/23 **New Requ #:** **Change Requisition Number #**

**Name of Requestor completing this form:** Katie Ennis

| | |
|---|---|
| Original Purchase Order Amount | $ 424,120.00 |
| Change Order # 1 Amount | 231,146.00 |
| Change Order # 2 Amount | |
| Change Order # 3 Amount | |
| Change Order # 4 Amount | |
| Change Order # 5 Amount | |
| Change Order # 6 Amount | |
| Change Order # 7 Amount | |
| Change Order # 8 Amount | |
| New Purchase Order Amount | $ 655,266.00 |

| Vendor Name | Original Requisition Number | PO Number | Original PO Amount |
|---|---|---|---|
| Elenis Contracting LLC | 46212 | 80847 | $ 424,120.00 |

**REASON FOR CHANGE (Click box(s) to select):**

- ☐ Correct Freight Cost
- ☐ Correct Unit Cost
- ☐ Correct Account
- ☐ Correct Qty Ordered
- ☑ Add Line Item
- ☐ Cancel Line Item
- ☑ Add Additional Money
- ☐ Add/Delete/Change Project #
- ☐ Liquidate Money
- ☐ Cancel Entire PO
- ☐ Other-Explain:

**Please make correction(s) to original PO as listed below:**

| Original PO Line # | Quantity | UM | Description | Account Number | Project Number | Unit Cost | Extended Cost |
|---|---|---|---|---|---|---|---|
| 2 | 231,146.00 | SUM | Change Order #1 - Replace Underdrains | 424-4020-536.63-00 | WS23DF | 1.0000 | $ 231,146.00 |
| | | | | | | | $ - |
| | | | | | | | $ - |
| | | | | | | | $ - |
| | | | | | | | $ - |
| | | | | | | | $ - |
| | | | | | | | $ - |
| | | | | | | | $ - |

*THIS AMOUNT MUST BE LISTED AT THE TOP OF THIS FORM NEXT TO THE CORRESPONDING CHANGE ORDER #.* **$ 231,146.00**

***CHANGE ORDER REQUEST FORM - PAGE 2, JUSTIFICATION NOTE REQUIRED***

**Date:** _____ **New Requ #:** 0 ***Change Requisition Number #*** 1

**Change Order Justification:**

Costs associated with change order #1 for the Dyal Ground Water Filter #3 Project. The underdrains will have to be replaced in addition to the caps. The damage to the underdrains was unknown at the time of bid. This will be going to council on 6/6/23

*******Please be sure to save this Change Order Form as a PDF prior to inputting it into your requisition folder. *******

# Change Order

| | |
|---|---|
| Project Name/Number: | Dyal Ground Water Filter #3 Project (WS23DF) |
| Purchase Order: | 80847 |
| Change Order Number: | 1 |
| Original Contract Price: | $424,120 |
| Contingency Amount (revise 6/6/23): | Original - $42,413, Added - $231,146 (6/6/23)<br>**Total - $273,559** |
| Contingency Deductions: | -$231,146 |
| Contingency Additions: | $0 |
| **Adjusted Contingency Remaining:** | **$42,413** |
| Number of calendar days contract is increased due to this change order: | 42 |
| Number of calendar days contract is decreased due to this change order: | 0 |
| Original Final Completion Date: | October 24, 2023 |
| **Adjusted Final Completion Date:** | **December 5, 2023** |
| This change order is requested by: | Elenis Contracting LLC |
| This change order is recommended by: | Katherine Ennis, PE, City Project Manager |

This Change Order shall encompass all expenses incidental to the work, also including materials and labor. Following the execution of this Change Order there are no pending requests for time or costs associated with the project. The undersigned agree to the terms of this change order.

Contractor/Date

Project Manager/Date

Utilities Director/Date

# Change Order

Justification:

Underdrains are damaged and recommended to be replaced for the entire filter #3 per the manufacturer Leopold. Damage unknown at time of bid.

Proposal Costs:

Add $231,146 to PO 80847. Details of breakdown of costs attached.

Contract Time:

42 additional days

The following modification(s) to the Contract are hereby Ordered:

Change Order #1 will be issued to PO 80847

# Dyal Ground Water Filter #3 Project (WS23DF)

| | Description | Accounting | Execution date |
|---|---|---|---|
| Original Contract Amount | | $ 424,120.00 | 3/14/2023 |
| Original Contingency | Original approved by Council on 3/14/23. | $ 42,413.00 | 3/14/2023 |
| Additional Contingency | Additional contingency to be approved 6/6/23. | $ 231,146.00 | 6/6/2023 |
| Total Contingency | Total Contingency Approved | $ 273,559.00 | 6/6/2023 |
| Project Change Order No. 1 | Underdrains are damaged and recommended to be replaced for the entire filter. Damage unknown at time of bid. | $ (231,146.00) | |

| | | |
|---|---|---|
| **Remaining Contingency** | **$** | **42,413.00** |
| **Percentage Contingency Available** | | **15.50%** |
| **Change Order Percentage of Contract** | | **54.50%** |

**Elenis Contracting LLC**

2533 Coblentz Dr
Youngstown, OH 44514
(330) 518-8765
Aelenis@eleniscontractingllc.com



# Scope of Work

**Project Location:** DYAL Water Treatment Plant, 28400 FL-520, Christmas, FL 32709
**Project:** B-23-14-COC GWF3 IMS Cap and Media Replacement
**Project Description:** Replace Damaged Underdrains/IMS Caps. Mobilize in August to start demo.
**Request Date:** 05/10/2023
**Requested by:** Katie Ennis, Deputy Director

## GWF3 Underdrain Replacement Scope of Work

- Xylem/MTS has provided 2 options for us.
- Elenis Contracting will include all additional labor and materials associated with rehab.
- Option 1 will completely replace the Underdrain/IMS Caps in Norwest cell and only IMS Caps in Northeast cell. Caps will come factory installed on underdrains for Norwest cell. Elenis Contracting will field remove and install new caps in Northeast cell.
- Option 2 will completely replace both sides. IMS Caps will be factory installed and shipped for installation by Elenis Contracting.

## Items included in Scope

- Mobilization.
- Demolition, removal and disposal of underdrain hdpe plastic.
- Dumpster Rental.
- Demolition and disposal of grout at the sludge pit.
- Forklift rental for underdrain removal and disposal.
- Vacuum truck rental for debris and media disposal from damaged underdrains.
- Grout and mortar mixer rental
- Additional labor/materials.
- Sales tax for new PO.
- Additional bonding payment.

2533 Coblentz Dr
Youngstown, OH 44514
(330) 518-8765
Aelenis@eleniscontractingllc.com

**Option 1 – Complete Replacement of (1) cell – Northwest and IMS Caps for Northeast. Add 3 extra weeks to contract time.**
**Added to Contract - $151,985.00** (Northwest underdrain/ims caps and northeast ims caps only)
**Added to Contract – $42,130.00** (Additional labor/materials for Northwest cell underdrain rehab)
**Removed from Contract – $25,742.50** (1/2 of Line Item 4 on SOV)
**Removed from Contract – $25,742.50** (1/2 of Line Item 6 on SOV)
**Removed from Contract - $109,915.00** (Line Item 5 on SOV)

**New Contract Total**
**$456,835.00** *Four Hundred Fifty-Six Thousand Eight Hundred Thirty-Five Dollars and Zero Cents.*

**Option 2 – Complete Replacement of both underdrains – IMS Caps factory installed. Add 6 weeks to contract time.**
**Added to Contract - $276,800.00** (Both cells underdrain/ims caps)
**Added to Contract – $167,231.00 (**Labor/materials for Northwest/Northeast cell underdrain rehab)
**Removed from Contract – $51,485.00** (Line Item 4 on SOV)
**Removed from Contract – $51,485.00** (Line Item 6 on SOV)
**Removed from Contract - $109,915.00** (Line Item 5 on SOV)

**New Contract Total**
**$ 655,266.00** *Six Hundred Fifty-Five Thousand Two Hundred Sixty-Six Dollars and Zero Cents.*

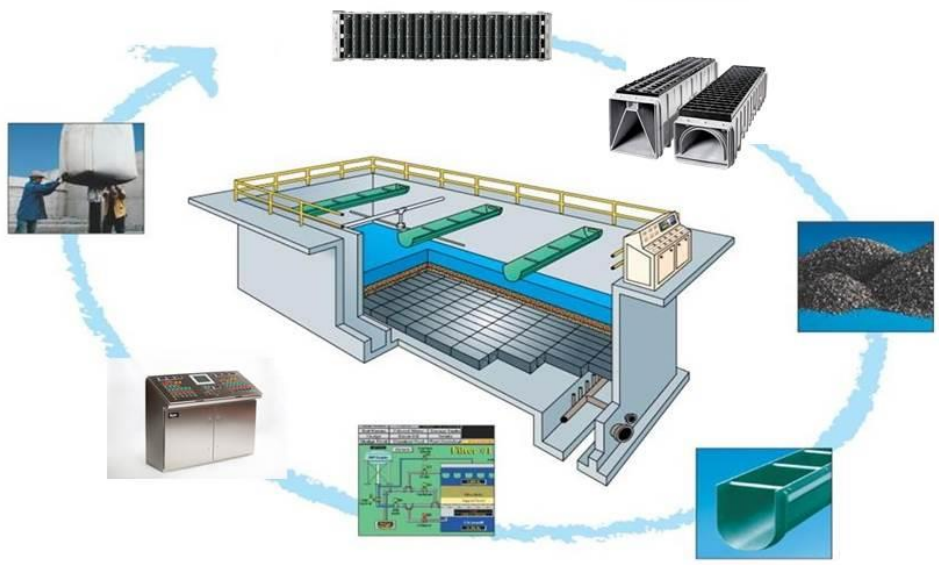
Price valid for 30 days

**Signed:** Anargiros Elenis **Date:** 05/10/2023
**Anargiros Elenis - President**

# Proposal

# Dyal WTP

Cocoa, FL.



Prepared for:

Elenis Contracting LLC

5/4/2023

**Xylem Water Solutions USA, Inc.**
108 Tomlinson Drive Suite 400
Zelienople, PA 16063
Mr. Chris Ball
Direct: 724-453-2109
Mobile: 724-713-7145
Email: chris.ball@xylem.com

5/4/2023

**Project name : Cocoa, FL Dyal WTP**
**Project number : I22490**

To Whom It May Concern:

Based on your inquiry, we are pleased to forward the following proposal to your attention. Thank you for the opportunity to offer our equipment and services for the Cocoa, FL Dyal WTP project.

We hope that our proposal meets your expectation. If you have any questions, please do not hesitate to contact me or our local representative.

Respectfully,

Chris Ball
Senior Sales Engineer

# 1 Technical Description

## 1.1 SCOPE OF SUPPLY

We are pleased to offer the following materials and services by Xylem Water Solutions USA, Inc. This quotation has been prepared using previous Leopold contract M3-4318-L and associated drawing 4318.90.1.

**FILTER UNDERDRAIN SYSTEM – OPTION 1 – 1 FILTER CELL:**

**LEOPOLD UNIVERSAL® TYPE S® UNDERDRAIN:**

Under this section, we propose to furnish Leopold Universal® Type S® Underdrain of the Dual/Parallel Lateral type, manufactured from corrosion resistant, high density polyethylene for installation in one (1) filter cell. The filter cell measures 19'-0" lateral run x 36'-8". The total filter area is 697 square feet.

The blocks shall be arranged end-to-end and mechanically joined with an O-ring to form continuous underdrain laterals approximately equivalent to the length of the filter cell. The joints shall be gasketed, bell and spigot type with internal alignment tabs for proper alignment, and be air and water tight. Joints shall be snap-lock type so that the blocks are joined with integral interlocking snap lugs and lug receptors for ease of assembly and installation of the laterals, and supplied 316 stainless steel grout mesh. Epoxy, sealant, bonding agents, or other similar materials used during installation are not included and to be provided by others.

Each lateral shall be fitted with and 316 stainless steel insert which will be sealed to the underdrain and the filter wall. The inserts will be leveled with a 316 stainless steel angle and attached with 316 stainless steel hardware. Each lateral make up block shall be specially cut for the filter air header piping.

**I.M.S® 200 MEDIA RETAINER:**

Under this section, we propose to furnish 697 square feet of I.M.S® 200 media retainer. The scope includes molded thermoplastic I.M.S® 200 media retainer factory installed onto the proposed Leopold Universal® Type S® Underdrain block prior to shipment.

**BACKWASH PRESSURE MONITORING:**

Under this section, we propose to furnish one (1) Mechanical Pressure Gauges for this project. The Mechanical Pressure Gauge is to be installed in the backwash supply line after the effluent tee. The pressure gauge is to monitor the head loss across each filter during a typical backwash. Monitoring should be done during system start-up and continued by the plant staff monthly following our O&M.

**FILTER UNDERDRAIN SYSTEM – OPTION 2 – 1 DUAL CELL FILTER:**

**LEOPOLD UNIVERSAL® TYPE S® UNDERDRAIN:**

Under this section, we propose to furnish Leopold Universal® Type S® Underdrain of the Dual/Parallel Lateral type, manufactured from corrosion resistant, high density polyethylene for installation in two (2) filter cells. Each filter cell measures 19'-0" lateral run x 36'-8". The total filter area is 1,394 square feet.

The blocks shall be arranged end-to-end and mechanically joined with an O-ring to form continuous underdrain laterals approximately equivalent to the length of the filter cell. The joints shall be gasketed, bell and spigot type with internal alignment tabs for proper alignment, and be air and water tight. Joints shall be snap-lock type so that the blocks are joined with integral interlocking snap lugs and lug receptors for ease of assembly and installation of the laterals, and supplied 316 stainless steel grout mesh. Epoxy, sealant, bonding agents, or other similar materials used during installation are not included and to be provided by others.

Each lateral shall be fitted with and 316 stainless steel insert which will be sealed to the underdrain and the filter wall. The inserts will be leveled with a 316 stainless steel angle and attached with 316 stainless steel hardware. Each lateral make up block shall be specially cut for the filter air header piping.

**I.M.S® 200 MEDIA RETAINER:**

Under this section, we propose to furnish 1,394 square feet of I.M.S® 200 media retainer. The scope includes molded thermoplastic I.M.S® 200 media retainer factory installed onto the proposed Leopold Universal® Type S® Underdrain block prior to shipment.

**BACKWASH PRESSURE MONITORING:**

Under this section, we propose to furnish two (2) Mechanical Pressure Gauges for this project. The Mechanical Pressure Gauge is to be installed in the backwash supply line after the effluent tee. The pressure gauge is to monitor the head loss across each filter during a typical backwash. Monitoring should be done during system start-up and continued by the plant staff monthly following our O&M.

## 1.2 SERVICES

**MANUFACTURER'S SERVICES (FILTER EQUIPMENT) – OPTION 1 – 1 FILTER CELL:**

The services of a qualified Leopold technical representative to instruct the Contractor's personnel about the proper installation technique of the **filter equipment** will be provided for a period of four (4) days (8 hr/day) on site in two (2) trips. Additional services may be obtained at the current prevailing rate plus living and travel expenses.

**MANUFACTURER'S SERVICES (FILTER EQUIPMENT) – OPTION 2 – 1 DUAL CELL FILTER:**

The services of a qualified Leopold technical representative to instruct the Contractor's personnel about the proper installation technique of the **filter equipment** will be provided for a period of six (6) days (8 hr/day) on site in two (2) trips. Additional services may be obtained at the current prevailing rate plus living and travel expenses.

# 2 Technical Clarification & Deviations

1. Not Used

# 3 Price & Scope of Supply

## 3.1 MAIN SCOPE

**BASIS of PRICING:**

Any items and/or accessories not specifically called out in this quotation must be construed as being furnished by others.

This quotation is considered firm for 90 days. Orders received more than 90 days after the date of this quotation are reviewed by Xylem Water Solutions USA, Inc before acceptance and are subject to changes in prices or delivery depending on conditions existing at the time of entry. Quoted prices are firm for delivery within 12 months from the delivery date stipulated in the plans & specifications or mutually agreed upon by Xylem Water Solutions USA, Inc. and Purchase Order issuer at time of order placement.

We do not include any applicable taxes.

Orders resulting from this quotation should be addressed to Xylem Water Solutions USA, Inc. 108 Tomlinson Drive Suite 400 Zelienople, PA 16063.

We propose to furnish the material described in this document for **a total selling price of**

| | |
|---|---|
| **OPTION 1 – 1 FILTER CELL** | **$151,985.00** |
| **OPTION 2 – 1 DUAL CELL FILTER** | **$276,800.00** |

Pricing for the equipment and field services outlined in this proposal, DAP Jobsite per Incoterms 2020.

For further information pertaining to the equipment contained in this proposal, please contact our area representative, who is:

MTS Environmental, Inc.
27237 Fordham Drive
Wesley Chapel, FL 33543
Bob Bierhorst
Phone: 813-760-5508

**Pricing is based on the following payment terms (net 30 days):**

**10% following initial submittal for approval**

**80% following the date of the respective shipments of the product**

**5% following installation, not to exceed 150 days after shipment of the product *(whichever comes first)***

**5% following start-up, not to exceed 180 days after shipment of the product *(whichever comes first)***

# 4 Commercial Terms & Conditions

## 4.1 DELIVERY SCHEDULE

### 4.1.1 Production schedule

Submittal of mechanical drawings for approval 4 to 6 weeks after order acceptance.

### 4.1.2 Delivery time

Delivery of fabricated items and 8 to 20 weeks after drawing approval.

FILTER MEDIA WARRANTY (if applicable): SELLER warrants that its filter media products will meet the standards established by the latest edition of AWWA (American Water Works Association) B100. SELLER shall be responsible for verifying that the filter media meets or exceeds the AWWA B100 Standard at the point of sale. Testing shall be by an independent laboratory, which regularly performs testing of filter media. BUYER shall notify Xylem Water Solutions USA, Inc. immediately upon discovery of any defective product. The SELLER shall have the right to inspect said product and BUYER shall, if requested, return the defective product to the SELLER with transportation prepaid. NO LIABILITY IS ASSUMED BY THE SELLER UNDER ANY CIRCUMSTANCES FOR LABOR, MATERIAL OR OTHER COSTS ASSOCIATED WITH THE REMOVAL OR REPLACEMENT OF MEDIA UNLESS PREVIOUSLY APPROVED IN WRITING BY AN AUTHORIZED EMPLOYEE OF THE SELLER.

## 4.2 TERMS AND CONDITIONS OF SALE – NORTH AMERICA

This order is subject to the Standard Terms and Conditions of Sale – Xylem Americas effective on the date the order is accepted. Terms are available at http://www.xyleminc.com/en-us/Pages/terms-conditions-of-sale.aspx and incorporated herein by reference and made a part of the agreement between parties.
Different terms are hereby rejected unless expressly assented to in writing.

AGREEMENT TO PURCHASE: BUYER agrees to purchase the equipment and services herein in accordance with the terms and conditions set forth above.

_____
(BUYER)

BY:_____

_____

_____

_____, 20 _____

ACCEPTANCE: SELLER hereby accepts BUYER'S offer to purchase.

Xylem Water Solutions USA, Inc.

BY:_____

_____

_____

_____, 20 _____

# SERVICE REPORT

## QUALITY SYSTEM FORM



## Part I - Customer & Plant Site Information

| 1. Customer Information (Include Customer Name, Address, P#, Email) | 2. Today's Date: 5/7/23 | |
|---|---|---|
| Cocoa, FL<br>Andio Elenis 330-518-8765 | 3. Contract Number: I22490 | |
| | 4. Arrival Time: 5/3/23 | 5. Departure Time: 5/5/23 |
| 6. Plant Site Information (Include Site Contact Name, Address, Ph#, Email) | 7. XYLEM Address | |
| 28400 SR 520<br>Christmas, FL 32709 | XYLEM.<br>108 Tomlinson Drive Suite 400<br>Zelienople, PA 16063<br>Phone: 724-452-6300; Fax: 724-452-1377 | |

## Part II – Worked Performed

| 8. Did the customer request this visit? ☐ Yes No ☐<br>Authority for call: John Lee | 9. Is the equipment operating satisfactorily? ☐ Yes No ☐ |
|---|---|

**10. Describe the work performed:**

Filter #3 Inspection

I arrived on site and met with Andio Elenis the contractor, and Katie with Cocoa WTP.
Filter 3 right side or the west side had several laterals lifted after media removal. There is no repairing that side of filter 3.The underdrain needs to be replaced.
The condition of filter 3 left side or the east side is hard to tell without back washing it. Once the west side is demoed out and IMS caps are removed from east side, they can back wash filter 3 and try to flush out any media from the east side. This procedure could take a lot of time.
I recommend that the underdrain in both sides of filter 3 be removed.















11. Other Remarks or Comments:

| Part III – Service Sign-Off (Leopold Representative to Fill In) | | |
|---|---|---|
| 12. Company<br>XYLEM | 13. Leopold Representative Printed Name & Title<br>Greg Spicer | 14. Leopold Representative Signature: |

## DYAL GROUNDWATER FILTER #3 IMS CAP AND MEDIA REPLACEMENT IMPORTANT DATES

*Elenis Contracting, LLC*

*Anadio Elenis*

Update Date: 5/19/2023

| | *Baseline* | | | *Planned* | | | *Actual* | | |
|---|---|---|---|---|---|---|---|---|---|
| **Activity** | **Earliest Start Date (ES)** | **Latest Finish Date (LF)** | **Duration (LF - ES)** | **Planned Start Date (PS)** | **Planned Finish Date (PF)** | **Planned Duration (PF - PS)** | **Actual Start Date (AS)** | **Actual Finish Date (AF)** | **Actual Duration (AF - AS)** |
| Notice to Proceed | 4/27/2023 | 4/27/2023 | 0 Days | 4/27/2023 | 4/27/2023 | 0 Days | 4/27/2023 | 4/27/2023 | 0 Days |
| Leopold Cap Order/Delivery | 9/12/2023 | 9/14/2023 | 2 Days | 9/12/2023 | 9/14/2023 | 2 Days | | | 0 Days |
| Media Order/Delivery | 9/12/2023 | 9/14/2023 | 2 Days | 9/12/2023 | 9/14/2023 | 2 Days | | | 0 Days |
| Removal of Old Media/Disposal | 4/27/2023 | 5/2/2023 | 5 Days | 4/27/2023 | 5/2/2023 | 5 Days | | | 0 Days |
| Pressure Washing/Painting | 9/20/2023 | 9/24/2023 | 4 Days | 9/20/2023 | 9/24/2023 | 4 Days | | | 0 Days |
| Removal of Underdrains | 8/7/2023 | 8/28/2023 | 21 Days | 8/7/2023 | 8/28/2023 | 21 Days | | | 0 Days |
| Installation of NEW Underdrain/Caps | 8/29/2023 | 9/19/2023 | 21 Days | 8/29/2023 | 9/19/2023 | 21 Days | | | 0 Days |
| Installation of NEW Media | 10/2/2023 | 10/9/2023 | 7 Days | 10/2/2023 | 10/9/2023 | 7 Days | | | 0 Days |
| Substantial Completion | 10/9/2023 | 10/10/2023 | 1 Days | 10/9/2023 | 10/10/2023 | 1 Days | | | 0 Days |
| Final Completion | 12/5/2023 | 12/5/2023 | 0 Days | 12/5/2023 | 12/5/2023 | 0 Days | | | 0 Days |

*These are the anticipated dates at the start of the project.*

*These are the planned dates updated each progress meeting. Dates may be same as dates on the Baseline or can change.*

*These are the Actual Start and Finish Dates.*

| 1) Enter Dates here to create the Baseline | 2) Update each Progress Meeting | 3) Update when the Activity actually starts/finishes |
|---|---|---|

# Schedule of Contract Values

(This form must be completed by the Contractor for the Project.)

PROJECT NAME: DYAL GW Filter #3 Cap and Media F
PROJECT #: ITB B-23-14-COC
CONTRACTOR: Elenis Contracting LLC

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
PERCENT COMPLETE TO DATE:

| A | B | C | D | E | F | G | H | I | J |
|---|---|---|---|---|---|---|---|---|---|
| **ITEM** | **DESCRIPTION OF WORK** | **SCHEDULED** | **WORK COMPLETED** | | **MATERIALS** | **TOTAL** | **%** | **BALANCE** | **RETAINAGE** |
| NO. | | **VALUE** | **FROM PREVIOUS** | **THIS PERIOD** | **PRESENTLY** | **COMPLETED** | (G ÷ C) | **TO FINISH** | (IF VARIABLE |
| | | | **APPLICATION** | | **STORED** | **AND STORED** | | (C - G) | RATE) |
| | | | (D + E) | | (NOT IN | **TO DATE** | | | |
| | | | | | D OR E) | (D+E+F) | | | |
| 1 | Mobilization | 10000 | | | | | | | |
| 2 | Removal of Media | 51485 | | | | | | | |
| 3 | Pressure Washing/Surface Prep/Painting | 29250 | | | | | | | |
| 4 | Removal of IMS Caps | 51485 | | | | | | | |
| 5 | Leopold Caps/Hardware Delivery | 109915 | | | | | | | |
| 6 | Installation of Caps | 51485 | | | | | | | |
| 7 | Delivery/Installation of Filter Media | 120500 | | | | | | | |
| 8 | Change Order #1 - Addition of Underdrains | 231146 | | | | | | | |
| | | | | | | | | | |
| | (Add any change order(s) descriptions) | | | | | | | | |
| | | | | | | | | | |
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| | | | | | | | | | |
| | | | | | | | | | |
| | **GRAND TOTALS** | **655266** | **0** | **0** | **0** | **0** | **0** | **0** | **0** |
| | | | | | | | | | |

**Contract Manager**: Minimum performance requirements successfully completed and approved by: _____ Date: ____/_____/_____

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-322 | **Version:** 1 | **Name:** | | |
| **Type:** | Contract | | **Status:** | Consent Agenda | |
| **File created:** | 5/15/2023 | | **In control:** | City Council | |
| **On agenda:** | 6/6/2023 | | **Final action:** | | |
| **Title:** | Approve the First Amendment to Purchase Agreements with Atlantic Development of Cocoa, Inc., and Danus Utilities, Inc. under RFQ Q-20-18-COC; To Award RFQ Q-20-18-COC, General Contractor - Utility Systems, to Hinterland Group, Inc.; To Authorize the City Manager and City Attorney to Negotiate and Execute the Agreement for Utilities General Construction Contractor with Hinterland Group, Inc. (Utilities Director) | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | Partial Signed Agreement for Utilities General Construction Contractor Hinterland.pdf<br>Agreement for Utilities General Construction Contractor Atlantic.pdf<br>Agreement for Utilities General Construction Contractor Danus.pdf<br>1st Amendment Atlantic Partially Ex.pdf<br>1st Amendment Danus Partially Ex.pdf<br>Pages from Bid Tabulation.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 15, 2023
Agenda Date: June 6, 2023
Prepared By: John Perrin, P.E., Senior Engineer
Through: John A. Walsh, P.E., Utilities Director
Requested Action:
To Approve the First Amendment to Purchase Agreements with Atlantic Development of Cocoa, Inc., and Danus Utilities, Inc. under RFQ Q-20-18-COC; To Award RFQ Q-20-18-COC, General Contractor - Utility Systems, to Hinterland Group, Inc.; To Authorize the City Manager and City Attorney to Negotiate and Execute the Agreement for Utilities General Construction Contractor with Hinterland Group, Inc.

## BACKGROUND:

On October 27, 2020, City Council approved the award of RFQ Q-20-18-COC and authorized the City Manager to execute the Continuing Services Agreements with the following three short-listed firms:

Atlantic Development of Cocoa, Inc. (Atlantic)
Danus Utilities, Inc. (Danus)

Southern Underground Industries, Inc. (Southern)

Agreements were entered into on November 9, 2020 and November 10, 2020 with Atlantic and Danus, respectively, with the option to renew for up to two additional two-year renewal periods with the same terms and conditions. Staff recommends approval of the first amendment to renew the agreements with Atlantic and Danus for the first two-year renewal period effective through November 8, 2025 and November 9, 2025, respectively.

On April 11, 2023, City Council authorized the City Manager to terminate the Continuing Services Agreement under RFQ Q-20-18-COC with Southern.

In order to maintain three Continuing Services Agreements and encourage competitive pricing for Utilities General Construction Contractor projects, Staff recommends awarding a Continuing Services Agreement under RFQ Q-20-18-COC to Hinterland Group, Inc., which is the next highest ranked contractor as determined by the RFQ Review Committee for Utilities General Construction Contractor during the original selection process. The term of the agreement with Hinterland is effective through November 8, 2025.

## STRATEGIC PLAN CONNECTION:

N/A

## BUDGETARY IMPACT:

| | |
|---|---|
| Budgeted | N/A |
| If not budgeted, is amendment/transfer attached? | N/A |

## PREVIOUS ACTION:

October 27, 2020, City Council approved the award of RFQ Q-20-18-COC and authorized the City Manager to execute the Continuing Services Agreements with the three short-listed firms, Atlantic, Danus, and Southern.

On April 11, 2023, City Council authorized the City Manager to terminate the Agreement for Utilities General Construction Contractor, dated November 9, 2020, with Southern Underground Industries, Inc. under RFQ Q-20-18-COC.

## RECOMMENDED MOTION:

To Approve the First Amendment to Purchase Agreements with Atlantic Development of Cocoa, Inc., and Danus Utilities, Inc. under RFQ Q-20-18-COC; To Award RFQ Q-20-18-COC, General Contractor - Utility Systems, to Hinterland Group, Inc.; To Authorize the City Manager and City Attorney to Negotiate and Execute the Agreement for Utilities General Construction Contractor with Hinterland Group, Inc.

**AGREEMENT FOR UTILITIES**
**GENERAL CONSTRUCTION CONTRACTOR**

**THIS AGREEMENT** is made and entered into this _____ day of _____, 20____, by and between the **CITY OF COCOA, FLORIDA**, a Florida Municipal Corporation, hereinafter referred to as "City", located at 65 Stone Street, Cocoa 32922, and **HINTERLAND GROUP, Inc.** 5580 State Road 524, Cocoa, Florida 32926, hereinafter referred to as "Utility Contractor".

**WITNESSETH:**

**WHEREAS**, City wishes to obtain underground utility services on a continuing basis; and

**WHEREAS**, the City has followed the selection and negotiation process set forth in the Florida's Consultants' Competitive Negotiation Act, Section 287.055, *Florida Statutes;* and

**WHEREAS**, Utility Contractor submitted a proposal to RFQ Q-20-18-COC on July 15, 2020 and was the fourth ranking proposer as approved by the City Council at a duly held meeting on October 27, 2020 to perform future services on an as needed basis; and

**WHEREAS**, City Council, on April 11, 2023 has dismissed one of the three previous awardees for these services and wishes to make an award to the next best ranking proposer; and

**WHEREAS**, Utility Contractor is willing to provide such underground utility services to the City under the terms and conditions stated herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

## 1.0 TERM AND DEFINITIONS

**1.1** Unless sooner terminated by either Party pursuant to the terms and conditions herein, this Agreement shall terminate on November 9, 2025. This Agreement may be renewed by mutual agreement of the Parties for a maximum of one (1) two (2) year renewal term.

**1.2** The terms and conditions of any Task Authorization, as described in Section 2 hereof, shall be as set forth in such Task Authorization. Any Task Authorization in effect at the termination of this Agreement shall remain in effect until completion of said Task Authorization, and all of the terms and conditions of this Agreement shall survive until completion of all Task Authorizations.

**1.3 Definitions**. The following words and phrases used in this Agreement shall have the following meaning ascribed to them unless the context clearly indicates otherwise:

A. "Agreement" or "Contract" shall be used interchangeably and shall refer to this Agreement, as amended from time to time, which shall constitute authorization for the Utility Contractor to provide the construction services approved by Task Authorization by the City.

B. "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not go into effect until said date.

C. "Utility Contractor" shall mean **Hinterland Group, Inc.,** and its principals, employees, resident project representatives (and assistants).

D. "Public Record" shall have the meaning given in Section 119.011(1), *Florida Statutes*.

E. "Reimbursable Expenses" shall mean the actual expenses incurred by Utility Contractor or Utility Contractor's independent professional associates and consultants which are directly related to travel and subsistence at the rates, and under the requirements of, Section 112.061, Florida Statutes, or any other actual expenses the City agrees to reimburse by Task Authorization.

F. "Work" or "Services" shall be used interchangeably and shall include the performance of the work agreed to by the parties in a Task Authorization.

G. "Task Authorization" shall mean a written document approved by the parties pursuant to the procedure outlined in paragraph 2.0 of this Agreement, and any amendments thereto approved pursuant to the procedures outlined in paragraph 3.0 herein, which sets forth the Work to be performed by Utility Contractor under this Agreement.

## 2.0 DESCRIPTION OF SERVICES

**2.1** The City shall make request of Utility Contractor to perform underground utility services on a "Task" basis. The City will communicate with Utility Contractor, verbally or in writing, a general description of the task to be performed. The Utility Contractor will generate a detailed Scope of Work document, prepare a Schedule, add a Not-to-Exceed-Budget or Lump Sum Fee to accomplish the task, and send the thus developed "Task Proposal" to the City. If a site visit by Utility Contractor is needed to generate the scope document, Utility Contractor shall request approval prior to visiting the site. The City will review the Task Proposal, and if the description is mutually acceptable, the parties will enter into a written "Task Authorization". The Scope of Services generally to be provided by the Utility Contractor through a Task Authorization may include any phases of utility construction. These phases are more clearly defined in the attached **Exhibit "A".** Nothing herein shall be construed to guarantee that Utility Contractor will be assigned a Task.

**2.2** The City will issue a Notice to Proceed to the Utility Contractor in the form of a City purchase order. Upon receipt of the signed Task Authorization and a written Notice to

Proceed from the City, the Utility Contractor shall perform the services set forth in the Task Authorization.

**2.3** For each Task Authorization in excess of $25,000.00, Utility Contractor shall supply a materials, performance and payment bond(s) in accordance with Florida law and in substantially in conformance with the form attached to the Agreement **Exhibit "B"** and approved by the City Attorney. The materials, performance, and payment amounts shall be in an amount equal to the total Contract Price for the Work required by the Task Authorization. The issuance of bonds required under this Agreement shall not relieve Utility Contractor of any liability under the Agreement and any applicable Task Authorization. Utility Contractor shall remain jointly and severally liable with any surety issuing a bond under the Task Authorization. The premium for such bonds shall be paid by the Utility Contractor.

## 3.0 CHANGES IN THE SCOPE OF WORK

**3.1** City may make changes in the Services at any time by giving written notice to Utility Contractor. If such changes increase (additional services) or decrease or eliminate any amount of work, City and Utility Contractor will negotiate any change in total cost or schedule modifications. If the City and Utility Contractor approve any change(s), the Task Authorization will be modified in writing to reflect the change(s); and Utility Contractor shall be compensated for said service(s) in accordance with the terms of Article 5.0 herein. All change orders shall be authorized in writing by City's and Utility Contractor's designated representative.

**3.2** All of City's said Task Authorizations and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

## 4.0 SCHEDULE; LIQUIDATED DAMAGES

**4.1** Utility Contractor shall perform services in conformance with the mutually agreed schedule set forth in the negotiated Task Authorization. The parties acknowledge that the agreed upon schedule provided in this Section includes consideration of adverse weather conditions common to Central Florida including the possibility of hurricanes and tropical storms. Utility Contractor shall complete all of said services in a timely manner and will keep City apprised of the status of work on at least a weekly basis or as otherwise reasonably requested by the City. Should Utility Contractor fall behind the agreed upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

**4.2** No extension for completion of services shall be granted to Utility Contractor without City's prior written consent, except as provided in Sections 3.1 and 20.1 herein.

**4.3** Unless otherwise expressly provided in the Task Authorization, City and Utility Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss if the Work required by a Task Authorization is not substantially complete within the time specified therein, plus any extensions thereof allowed in accordance with a written change order. They also recognize the delays, expense and difficulties involved in proving in a

legal or arbitration proceeding the actual loss suffered by City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, City and Utility Contractor agree that as liquidated damages for delay (but not as a penalty) Utility Contractor shall pay City five hundred dollars ($500.00) per day for each day that expires after the time specified in the applicable Task Authorization for both substantial and final completion until the work is completed within said time period, and that City has paid to the Utility Contractor the consideration of ten ($10.00) dollars as consideration for this provision.

The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Utility Contractor to the City under this Agreement and applicable Task Authorization, and shall not preclude the recovery of damages by the City under other provisions of the Agreement, except claims related to Utility Contractor's delays in substantial completion. The City's right to receive liquidated damages shall in no manner affect the City's right to terminate the Agreement or any applicable Task Authorization, as provided in this Agreement or elsewhere in the Task Authorization. The City's exercise of the right to terminate shall not release the Utility Contractor from the obligation to pay said liquidated damages.

When the City reasonably believes (i) that substantial completion will be inexcusably delayed; or (ii) that the Utility Contractor will fail to achieve final completion by the date of final completion, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Utility Contractor the daily amount specified for liquidated damages for each calendar day of the unexcused delay. If and when the Utility Contractor overcomes the delay in timely achieving substantial completion or final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Utility Contractor those funds withheld, but no longer applicable, as liquidated damages.

## 5.0 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF UTILITY CONTRACTOR

**5.1 General Services.** For basic and additional Services performed by Utility Contractor's principals, employees, and resident project representatives (and assistants) pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Utility Contractor an amount equal to that agreed upon by the parties for a particular Task Authorization.

**5.2 Additional Services Performed by Professional Associates and Consultants.** For additional Services and Reimbursable Expenses of independent professional associates and consultants employed by Utility Contractor to render additional Services pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Utility Contractor an amount equal to that billed Utility Contractor by the independent professional associates and consultants multiplied by a factor of 1.10. Prior to payment by the City, the Utility Contractor shall submit to the City a copy of any written invoice received by Utility Contractor from all independent professional associates and consultants which clearly evidences the amount billed by the independent professional associates and consultants for additional Services and any Reimbursable Expenses.

**5.3 Witness Services.** For witness or expert services rendered by Utility Contractor's principals, employees, resident project representatives (and assistants), and independent professional associates and consultants on behalf of the City in any litigation,

arbitration, or other legal or interested administrative proceeding in which the City is a named interested party, City agrees to pay the Utility Contractor or independent professional associate or consultant, which is used as a witness or expert, an amount equal to that agreed upon by the party for a particular Task Authorization.

**5.4 Reimbursable Expenses.** In addition to payments provided in paragraphs 5.1, 5.2 and 5.3 above, City agrees to pay Utility Contractor the actual cost of all Reimbursable Expenses incurred in connection with any Task Authorization.

**5.5 Payment.** Upon receipt of a proper invoice from Utility Contractor, the City agrees to pay the Utility Contractor the invoice amount providing said amount accurately reflects the terms and conditions of this Agreement and any applicable Task Authorization. Invoices may only be submitted on a monthly basis unless otherwise agreed by the City. Unless otherwise agreed in writing by the City, there shall be no other compensation paid to the Utility Contractor and its principals, employees, resident project representatives (and assistants), and independent professional associates and consultants in the performance of Work under this Agreement. The City agrees to make all payments due within thirty (30) days of receipt of a proper invoice delivered by Utility Contractor.

**5.6 Witholding Payments.** Progress payments may be withheld if:

a. Work is found defective and not remedied;

b. Utility Contractor does not make prompt and proper payments to subcontractors;

c. Utility Contractor does not make prompt and proper payments for labor, materials, or equipment furnished him;

d. Another Contractor is damaged by an act for which Utility Contractor is responsible;

e. Claims or liens are filed on the job; or

f. In the opinion of the City, Utility Contractor's work is not progressing satisfactorily.

5.7 **Final Payment.** The City shall withhold up to 5% of the Contract Price set forth in any Task Authorization throughout the subject project in accordance with the Local Government Prompt Payment Act ("Act"). City shall promptly make payment to the Utility Contractor unless the City has grounds, under the Act, for withholding the payment of the retainage. The remaining retainage amount withheld shall be released with the Final Payment after the issuance of the Final Completion Certificate. City shall make final payment to Utility Contractor within thirty (30) days after the work is fully and properly completed, if the contract has been fully and timely performed, but subject to the condition that final payment shall not be due until Utility Contractor has delivered to CITY a complete release of liens arising out of the Task Authorization, or receipt of releases of lien fully covering all labor, materials and equipment for

which a lien could be filed, or in the alternative a bond satisfactory to City indemnifying him against such claims.

By making payments, City does not waive claims including but not limited to those relating to:

a. Faulty work appearing after substantial completion has been granted;

b. Work that does not comply with the Task Authorization and this Agreement;

c. Outstanding claims of liens; or

d. Failure of Utility Contractor to comply with any special guarantees required by the Agreement and applicable Task Authorization.

## 6.0 RIGHT TO INSPECTION

**6.1** City or its affiliates shall at all times have the right to review or observe the services performed by Utility Contractor. The City shall be given free access to the worksite at all times during work preparation and progress. The City's Project Manager is not obligated to make exhaustive or continuous onsite inspections to perform his or her duties of checking and reporting on work progress, and any such inspections shall not waive City's claim regarding defective work by Utility Contractor.

**6.2** No inspection, review, or observation shall relieve Utility Contractor of its responsibility under this Agreement. The City will not be responsible for the means of construction, or for the sequences, methods and procedures used therein, or for the Utility Contractor's failure to perform the work in accordance with the applicable Task Authorization and this Agreements.

## 7.0 PROGRESS MEETING

**7.1** City's Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required by the City, during the term of work entered into under this Agreement. Utility Contractor's Project Manager and all other appropriate personnel shall attend such meetings as designated by the City's Project Manager. The City's review, inspection, or approval of any Work, applications for payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with the City's scope and requirements for the Project. No review, inspection, or approval by the City of such Work or documents shall relieve the Utility Contractor of its responsibility for the performance of its obligations under the applicable Task Authorization or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, design document, or construction document shall not relieve Utility Contractor of responsibility for the performance of its obligations under this Agreement and applicable Task Authorization. Payment by the City pursuant to the this

Agreement shall not constitute a waiver of any of the City's rights under this Agreement or at law, and the Utility Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City. Notwithstanding the foregoing, prompt written notice shall be given by the City or City Project Manager to the Utility Contractor if the City becomes aware of any fault or defect in the subject Project or non-conformance with this Agreement and applicable Task Authorization. Furthermore, the City shall not have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor shall the Utility Contractor, for any of the foregoing purposes, be deemed the agent of the City.

**8.0 RESPONSIBILITIES OF CONTRACTOR** The Utility Contractor's duties and rights in connection with any Task Authorization issued by the City herein are as follows:

**8.1** Responsibility for Supervision and Construction. Utility Contractor shall be solely responsible for all construction under the Task Authorization, including the techniques, sequences, procedures and means, for the coordination of all work. Utility Contractor shall supervise and direct the work, and give it all attention necessary for such proper supervision and direction.

**8.2** Discipline and Employment. Utility Contractor shall maintain at all times strict discipline among his employees, and he agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he was employed.

**8.3** Furnishing of Labor, Materials, etc. Utility Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment and machinery, utilities, including water, transportation, and all other facilities and work necessary for the proper completion of work on the project in accordance with this Agreement and Task Authorization.

**8.4** Payment of Taxes: Procurement of Licenses and Permits. Utility Contractor shall secure all licenses and permits necessary for proper completion of the work, paying the fees thereof. Utility Contractor warrants that it (and subcontractors or tradesmen, if authorized in the Task Authorization) hold or will secure all trade or professional licenses required by law for the Utility Contractor to undertake the Work required by the Task Authorization.

**8.5** Guarantee. The Utility Contractor hereby guarantees the Work to the full extent provided in the Task Authorization and any applicable Plans, Specifications, General Conditions, Special Conditions and other contract documents. The Utility Contractor shall remove, replace and/or repair at its own expense and at the convenience of the City any faulty, defective or improper Work, materials or equipment discovered within one (1) year from the date of the acceptance of the project as a whole by the City or for such longer period as may be provided in the applicable Task Authorization, Plans, Specifications, General Conditions, Special Conditions or other contract documents. Without limiting the generality of the foregoing, the Utility Contractor warrants to the City, that all materials and equipment furnished under this Agreement and Task Authorizations will be of first class quality and new, unless otherwise required or

permitted by the applicable Task Authorization, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Task Authorization. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Agreement and in the Task Authorization shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Furthermore, Utility Contractor will provide written guarantee for work and materials for a minimum of one (1) calendar year after acceptance by City unless a longer time period is required by a Task Authorization. The one (1) period is not a limitation upon manufacturer warranties or Utility Contractor's payment and performance Bond(s).

**8.6** Preparation/Sufficiency of Site. The Utility Contractor shall, among other things, and as applicable: (i) visit and thoroughly inspect the Project Sites and any structure(s) or other man-made features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (ii) familiarize itself with any provided survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components, and other attributes having or likely to have an impact on the Project; (iii) familiarize itself with the City's layout and design requirements, conceptual design objectives, and budget for the Projects; (iv) familiarize itself with pertinent Project dates, including the Project Schedule; (v) review and analyze all Project geotechnical, hazardous substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations, and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involve modifications to any existing structure(s) or other man-made feature(s) on the Project Site, the Utility Contractor shall also review all as-built and record drawings, plans, and specifications of which the Utility Contractor has been informed by the City, and shall thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by the Utility Contractor resulting from its failure to familiarize itself with the Project Sites or pertinent documents shall be deemed waived.

**8.7** Safety. Utility Contractor shall be solely and absolutely responsible and assume all liability for the safety and supervision of its principals, employees, resident project representatives (and assistants) while performing Services provided hereunder.

## 9.0 REASONABLE ACCESS

**9.1** During the term of this Agreement, City shall grant Utility Contractor reasonable access to the City's premises, records, and files for purposes of fulfilling its obligations under this Agreement.

## 10.0 INSURANCE

**10.1 Liability Amounts.** During the term of this Agreement, Utility Contractor shall be responsible for providing the types of insurance and limits of liability as set forth below.

A. Professional Liability: If professional services are rendered under any Task Authorization, proof of professional liability insurance shall be provided to the City for the minimum amount of $1,000,000 as the combined single limit for each occurrence.

B. The Utility Contractor shall maintain comprehensive general liability insurance in the minimum amount of $2,000,000 as the combined single limit for each occurrence to protect the Utility Contractor from claims of property damages which may arise from any Services performed under this Agreement whether such Services are performed by the Utility Contractor or by anyone directly employed by or contracting with the Utility Contractor.

C. The Utility Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of $1,000,000 combined single limit bodily injury and minimum $50,000 property damage as the combined single limit for each occurrence to protect the Utility Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Utility Contractor or by anyone directly or indirectly employed by the Utility Contractor.

D. Utility Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing Work for the City pursuant to this Agreement.

**10.2 Special Requirements.** Current, valid insurance policies meeting the requirements herein identified shall be maintained during the term of this Agreement. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date. There shall also be a 30-day advance written notification to the City in the event of cancellation or modification of any stipulated insurance coverage. **With the exception of any required professional insurance policy hereunder, the City shall be an additional named insured on all stipulated insurance policies as its interest may appear, from time to time.**

**10.3 Independent Associates and Consultants.** All independent associates and consultants employed by Utility Contractor to perform any Services hereunder shall fully comply with the insurance provisions contained in this paragraph.

## 11.0 COMPLIANCE WITH LAWS AND REGULATIONS

**11.1** Utility Contractor shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of Services under this Agreement.

## 12.0 REPRESENTATIONS

**12.1** Utility Contractor represents that the Services provided hereunder shall conform to all requirements of this Agreement and any Task Authorization, shall be consistent with

recognized and sound construction practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the Services rendered.

**12.2** Utility Contractor represents that all principals, employees, and other personnel furnishing such Services shall be qualified and competent to perform the Services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best professional knowledge and judgment.

## 13.0 GUARANTEE AGAINST INFRINGEMENT

**13.1** Utility Contractor guarantees that all Services performed under this Agreement shall be free from claims of patent, copyright, and trademarks infringement. Notwithstanding any other provision of this Agreement, Utility Contractor shall indemnify, hold harmless, and defend City, its officers, directors, attorneys, employees, agents assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, Services, or other item provided under this Agreement. Notwithstanding the foregoing, Utility Contractor may elect to provide non-infringing services.

## 14.0 DOCUMENTS

**14.1 Public Records.** Pursuant to Section 119.0701, Florida Statutes and other applicable public records laws, Utility Contractor agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics or means of transmission, of Utility Contractor related, directly or indirectly, to the services provided to the City under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record, whether in the possession or control of City or the Utility Contractor. Said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics or means of transmission of Utility Contractor are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the City's designated custodian of public records.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS/CITY CLERK AT (321) 433-8484, 65 STONE STREET, COCOA, FLORIDA 32922.**

Utility Contractor is required to and agrees to comply with public records laws. Utility Contractor shall keep and maintain all public records required by City to perform the services as agreed to herein. Utility Contractor shall provide the City, upon request from the CITY CLERK, copies of the requested records or allow the records to be inspected or copied within a reasonable time at a

cost that does not exceed the cost provided by law. Utility Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term. Upon completion of the Agreement, Utility Contractor shall transfer to City, at no cost, all public records in possession of the Utility Contractor, provided the transfer is requested in writing by the City Clerk. Upon such transfer, Utility Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. However, if the City Clerk does not request that the public records be transferred, the Utility Contractor shall continue to keep and maintain the public records upon completion of the Agreement and shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from the City Clerk, in a format that is compatible with the information technology systems of City. Should the City not possess public records relating to this Agreement which are requested to be inspected or copied by the City or any other person, the City shall immediately notify Utility Contractor of the request and the Utility Contractor shall then provide such records to the City or allow the records to be inspected or copied within a reasonable time. If the Utility Contractor does not comply with a public records request, the City may enforce this Section to the extent permitted by law. Utility Contractor acknowledges that if the Utility Contractor does not provide the public records to the City within a reasonable time, the Utility Contractor may be subject to penalties under Section 119.10, Florida Statutes. The Utility Contractor acknowledges that if a civil action is filed against the Utility Contractor to compel production of public records relating to this Agreement, the court may assess and award against Utility Contractor the reasonable costs of enforcement, including reasonable attorney fees. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Utility Contractor, be open and freely exhibited to the City for the purpose of examination, audit or otherwise. Failure by Utility Contractor to grant such public access and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the City upon delivery of a written notice of cancellation. If the Utility Contractor fails to comply with this Section, and the City must enforce this Section, or the City suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Utility Contractor failure to comply with this Section, the City shall collect from Utility Contractor prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Utility Contractor. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Utility Contractor failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

**14.2 Reuse of Documents.** All documents, including but not limited to, drawings, specifications, and data, or programs stored electronically or otherwise, prepared by the Utility Contractor and its independent contractors and associates pursuant to this Agreement or related exclusively to the Services described herein may be reused by the City for any reason or purpose at anytime. However, the City agrees that the aforesaid documents are not intended or represented to be suitable for reuse by the City or others on any undertaking other than the Work outlined in this Agreement. Any reuse for an undertaking other than for the Work without verification or adoption by the Utility Contractor, or its independent contractors and associates if necessary, to specific purposes intended will be at the City's sole risk and without liability or legal exposure to the Utility Contractor.

**14.3** The Utility Contractor acknowledges that the City is a Florida Municipal Corporation and subject to the Florida Public Records Law. Utility Contractor agrees that to the extent any document produced by Utility Contractor under this Agreement constitutes a Public Record, Utility Contractor shall comply with the Florida Public Records Law.

## 15.0 ASSIGNMENT

**15.1** Utility Contractor shall not assign or subcontract this Agreement, any Task Authorization hereunder, or any rights or any monies due or to become due hereunder without the prior, written consent of City.

**15.2** If upon receiving written approval from City, any part of this Agreement is subcontracted by Utility Contractor, Utility Contractor shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

**15.3** If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Utility Contractor who shall take immediate steps to remedy the situation.

**15.4** If any part of this Agreement is subcontracted by Utility Contractor, prior to the commencement of any Work by the subcontractor, Utility Contractor shall require the subcontractor to provide City and its affiliates with insurance coverage as set forth by the City.

## 16.0 INDEPENDENT CONTRACTOR

**16.1** At all times during the term of this Agreement, Utility Contractor shall be considered an independent contractor and not an employee of the City.

## 17.0 TERMINATION; DEFAULT BY UTILITY CONTRACTOR AND CITY'S REMEDIES

**17.1** The City reserves the right to revoke and terminate this Agreement and rescind all rights and privileges associated with this Agreement, without penalty, at any time with or without cause. Without limitation, the following shall be considered cause for terminating this Agreement and shall constitute a default hereunder:

**17.2** Utility Contractor defaults in the performance of any material covenant or condition of this Agreement and does not cure such other default within thirty (30) calendar days after written notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the Utility Contractor shall have such time as is reasonably necessary to remedy the default, provided the Utility Contractor promptly takes and diligently pursues such actions as are necessary.

**17.3** Utility Contractor is adjudicated bankrupt or makes any assignment for the benefit of creditors or Utility Contractor becomes insolvent, or is unable or unwilling to pay its debts; or

**17.4** Utility Contractor has acted negligently, as defined by general and applicable law, in performing the Work hereunder; or

**17.5** Utility Contractor has committed any act of fraud upon the City; or

**17.6** Utility Contractor has made a material misrepresentation of fact to the City while performing its obligations under this Agreement.

**17.7** Utility Contractor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement without prejudice to any other right or remedy City may have under this Agreement.

**17.8** Utility Contractor fails to comply with any condition or provision of this Agreement including any Task Authorization.

**17.9** Notwithstanding the aforementioned, in the event of a default by Utility Contractor, the City shall have the right to exercise any other remedy the City may have by operation of law, without limitation, and without any further demand or notice. In the event of such termination, City shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for Work properly performed prior to the effective date of termination. Additionally, in the event of such termination upon default and breach of this Agreement, the City may take possession of the Project Site and of all materials, tools, and appliances thereon and finish the work by whatever method the City may deem expedient. Any completed services performed by Utility Contractor under this Agreement shall, at the option of the City, become the City's property and Utility Contractor shall be entitled to receive equitable compensation for any Work completed to the satisfaction of the City. The Utility Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement, and the City may withhold any payments to Utility Contractor for the purpose of setoff until such time as the amount of damages due to the City from Utility Contractor can be determined.

## 18.0 FORCE MAJEURE

**18.1** Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; plague; pandemic; flood; windstorm; explosion; riot; ware; sabotage; strikes; extraordinary breakdown of or damage to City's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this Agreement.

## 19.0 GOVERNING LAW & VENUE

**19.1** This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any state action or litigation shall be Brevard County, Florida. Venue for any federal action or litigation shall be Orlando, Florida.

**19.2** The parties agree that should any dispute arise between them regarding the terms or performance of this Agreement, both parties will participate in mediation. The parties agree to equally share the cost of the mediator. Should the parties fail to resolve their differences through mediation, then any cause of action filed hereunder shall be filed in the Circuit or County Court for Brevard County, Florida.

## 20.0 HEADINGS

**20.1** Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

## 21.0 SEVERABILITY

**21.1** In the event any portion or part of thereof this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise by fully enforceable.

## 22.0 WAIVER AND ELECTION OF REMEDIES

**22.1** Waiver by either party of any term, condition or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future.

**22.2** No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

## 23.0 THIRD PARTY RIGHTS

**23.1** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Utility Contractor.

## 24.0 PROHIBITION AGAINST CONTINGENT FEES

**24.1** Utility Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Utility Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Utility

Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

## 25.0 ENTIRE AGREEMENT

**25.1** This Agreement, including any Task Authorizations and Schedules, Attachments, Appendix's and Exhibits attached hereto, constitute the entire agreement between City and Utility Contractor with respect to the Services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. The terms and conditions of this Agreement shall be deemed automatically incorporated into any Task Authorization approved and executed hereunder regardless if the Task Authorization references this Agreement.

## 26.0 NO JOINT VENTURE

**26.1** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties; and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

## 27.0 ATTORNEY'S FEES

**27.1** Should either party bring an action to enforce any of the terms of this Agreement, each party shall bear its own costs and expenses of such action including, but not limited to, reasonable attorney's fees, whether at settlement, trial or on appeal.

## 28.0 COUNTERPARTS

**28.1** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

## 29.0 AGREEMENT INTERPRETATION; DRAFTING

**29.1** At its discretion, during the course of the work, should any errors, ambiguities or discrepancies be found in the Agreement or specifications, the City at its sole discretion will interpret the intent of the Agreement and work descriptions and the Utility Contractor hereby agrees to abide by the City's interpretation and agrees to carry out the work in accordance with the decision of the City. When the material, article or equipment is designated by a brand name and more than one brand name is listed, it will be understood that the work is based on one brand name only. The Utility Contractor will be responsible for all coordination necessary to accommodate the material, article or equipment being provided without additional cost to the City. A substitute material, article or equipment is allowed if it is reasonably equivalent to the brand name specified. The City has full discretion to decide whether a substitute is reasonably equivalent. Utility Contractor must notify the City prior to use of the substitute for a specified

brand name and allow the City to make a determination before Utility Contractor uses the substitute.

**29.2** City and Utility Contractor each represent that they have both shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties in a court of competent jurisdiction, except as provided in Section 29.1.

## 30.0 NON-DISCRIMINATION

**30.1** Utility Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

## 31.0 PUBLIC ENTITY CRIMES

**31.1** As provided in §287.132 and §287.133, *Florida Statutes*, by entering into this Contract or performing any work in furtherance hereof, the Utility Contractor certifies that it, its affiliates, suppliers, subcontractors and Contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by §287.133(3)(1), *Florida Statutes*.

## 32.0 CODE REQUIREMENTS

**32.1** The Utility Contractor and its subcontractors on any project must be familiar with all applicable Federal, State, County, City and Local Laws, Regulations or Codes and be governed accordingly as they will apply to the project and the actions or operations of those engaged in the work or concerning materials used. Utility Contractor shall ask for and receive any required inspections.

## 33.0 TESTING

**33.1** The Utility Contractor shall be responsible for all tests and testing required by this Contract, unless otherwise specified. All testing shall be done in the presence of a representative of the City. The City reserves the right to test all materials, products, installations and equipment.

**33.2** All pipelines will be placed in satisfactory operating condition by the Utility Contractor prior to final payment, and the Utility Contractor shall furnish a letter addressed to the City advising that the completed Work has been installed in accordance with the plans and specifications of this Contract and that all items are in proper operating condition.

## 34.0 CITY'S RIGHT TO STOP WORK

**34.1** If the Utility Contractor persistently fails or refuses to perform the Work in accordance with the contract documents, the City shall have the right, but not an obligation, to order the Utility Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that the Work be resumed. In such event, the Utility Contractor shall immediately obey such order. A stop work directive provided under this paragraph shall not entitle the Utility Contractor to an extension of the completion date.

## 35.0 CITY'S RIGHT TO PERFORM WORK

**35.1** If the Utility Contractor's Work is stopped by City, or if the Utility Contractor persistently fails or refuses to perform the Work in accordance with the contract documents, and the Utility Contractor fails within three (3) working days of such stoppage, failure, or refusal, to provide adequate assurance to the City that the cause of such stoppage, failure, or refusal will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against Utility Contractor, proceed to carry out the subject Work. In such a situation, an appropriate change order shall be issued deducting from the contract price the cost of correcting the subject deficiencies, plus compensation for the City's Consultant's additional services and expenses necessitated thereby, if any. If the unpaid portion of the contract price is insufficient to cover the amount due the City, the Utility Contractor shall pay the difference to the City.

## 36.0 EMERGENCIES

**36.1** All emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Utility Contractor, without special instruction or authorization from the City or the City's authorized representative, is obligated to immediately act to prevent threatened damage, injury, or loss. The Utility Contractor shall give the City's authorized representative(s) written documentation within three (3) days from the inception of said emergency if the Utility Contractor believes that any significant changes in the Work or variations from the contract documents have been caused thereby. If the City's authorized representative determines that a change in the contract documents is required because of action taken by the Utility Contractor in response to such an emergency, a change order will be issued to document the consequences of such action.

## 37.0 WARRANTY / GUARANTEE

Unless otherwise required by the specifications, the Utility Contractor shall furnish a one (1) year warranty on all equipment, furnishings, and installation provided hereunder against defect in material and/or workmanship. The warranty shall become effective on the Date of Substantial Completion and acceptance by the City or as otherwise required by law. Should any defect in materials or workmanship, excepting ordinary wear and tear, be discovered during the above-stated warranty period, the Utility Contractor, upon written notice from the City, shall immediately repair or replace same at no cost to the City. The Utility Contractor will not be

liable under the above warranty for any defects or damages resulting from unforeseeable causes beyond the control, and without fault or negligence, of the Utility Contractor, such as misuse or neglect by the City, acts of God, fires, floods and hurricanes.

## 38.0 WAIVER OF JURY TRIAL

**38.1** The City and Utility Contractor hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the construction of the work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

## 39.0 BARRICADES

**39.1** The Utility Contractor shall provide all barricades and/or protective safety devices and shall take all necessary precautions to protect all personnel and property. The Utility Contractor shall remove said barricades and/or safety devices from City property at the completion of the project.

## 40.0 COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT

**40.1** By the submission of its Bid, Bidder certifies that all material, equipment, etc. contained in its bid meets all Occupational Safety and Health Act (OSHA) requirements. Bidder further certifies that if it is the successful Bidder, and any of the material, equipment, etc. delivered is subsequently found to be deficient of any OSHA requirement in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the Bidder. Furthermore, in compliance with Florida law, any item delivered from a Task assigned under this Agreement must be accompanied by a Material Safety Data Sheet (MSDS). The MSDS must include the following information:

A. The chemical name and common name of the toxic substance

B. The hazards or other risks in the use of the toxic substances including:

1. The potential for fire, explosion, corrosion and reactivity
2. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance
3. The primary routes of entry and symptoms of over-exposure

C. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of over-exposure

D. The emergency procedure for spills, fire, disposal and first aid

E. A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information

F. The year and month, if available, that the information was compiled and the name, address and emergency telephone number of the manufacturer responsible for preparing the information

## 41.0 STORAGE, REMOVAL AND DISPOSAL OF SOLID WASTE/CONSTRUCTION DEBRIS

**41.1** The Utility Contractor must comply with all applicable City Codes and solid waste franchise agreements regarding the storage, removal, and disposal of solid waste and construction debris. Prior to performing any Services required hereunder, the Utility Contractor shall contact the City's Utilities Department for information relative to complying with this section.

## 42.0 MATERIALS, INSTALLATION AND PERFORMANCE

**42.1** The Utility Contractor shall be responsible for the provision, installation and performance of all equipment, materials, services, etc. offered in their Bid. The Utility Contractor is in no way relieved of the responsibility for the performance of all equipment furnished or of assuring the timely delivery of materials, equipment, etc. even though it is not of their own manufacture. Unless otherwise specified, material storage shall be on site and within the defined area of the Work and within the Utility Contractor's area of responsibility.

## 43.0 SET UP AND CONNECTIONS

**43.1** All equipment is to be set up, connected to utilities, checked and demonstrated at no charge to the City. The Utility Contractor shall be responsible for all transportation, off-loading, handling, storage and installation of any City-furnished Utility Contractor-installed material and equipment.

## 44.0 SAFETY AND PROTECTION OF PROPERTY

**44.1** The Utility Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, its employees on the Work and all other persons who may be affected thereby; the Work and materials and equipment to be incorporated therein; and all other property at the site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Utility Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, and shall give all notices required by same. This requirement includes, but is not limited to, the United Sates Occupational Safety and Health Act and the Florida Trench Safety Act, *Florida Statute* §553.60.

## 45.0 TAXES

**45.1** The Utility Contractor shall pay all applicable sales, consumer-use, and other similar taxes required by law. The Utility Contractor is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.

## 46.1 ENTIRETY OF CONTRACT

**46.1** The City and the Utility Contractor agree that this Contract sets forth the entire Contract between the parties and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 3.0 – Changes in the Scope of Work.

## 47.0 NOTICE

For Utility Contractor
Hinterland Group, Inc.
5580 State Road 524
Cocoa, Florida 32926
Attention: Daniel Duke III
Phone: 321-633-7066

For City:

City of Cocoa/ Utilities Department
Attention: Utilities Director
351 Shearer Blvd.
Cocoa, Florida 32922
(321) 433-8710

**47.1** Either party may change the notice address by providing the other party written notice of the change.

## 48.0 SOVEREIGN IMMUNITY

**48.1** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars ($200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars ($300,000.00). This paragraph shall survive termination of this Agreement.

## 49.0 CORPORATE REPRESENTATIONS BY UTILITY CONTRACTOR

**49.1** Utility Contractor hereby represents and warrants to the City the following:

A. Utility Contractor is duly registered and licensed to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in this Agreement.

B. The undersigned representative of Utility Contractor has the power, authority, and legal right to execute and deliver this Agreement on behalf of Utility Contractor.

## 50.0 INDEMNIFICATION.

**50.1** For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Utility Contractor shall indemnify, hold harmless and defend the City, its officers, agents, officials, representatives, employees, and/or attorneys against any and all liability, loss, cost, damages, expenses, claim or actions, of whatever type, including but not limited to attorney's fees and suit costs, for trial and appeal, which the City may hereafter sustain, incur or be required to pay, arising out of, wholly or in part, or due to any act or omission of Utility Contractor, its agent(s), vendors, contractors, subcontractor(s), representatives, servants or employees in the execution, performance or non-performance or failure to adequately perform Utility Contractor's obligations pursuant to this Agreement and any and all Task Authorizations hereunder.

**50.2** The indemnification provided above shall obligate the indemnifying party to defend at its own expense or to provide for such defense, at the sole option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City, its officers, agents, officials, representatives, employees, and/or attorneys which may result from the services under this Agreement whether the services be performed by the indemnifying party or anyone directly or indirectly employed or hired by them. In all events the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be subject to and included with this indemnification provided herein, as long as said fees are reasonable. This paragraph shall survive termination of this Agreement.

The Utility Contractor specifically assumes potential liability for actions brought by Utility Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, Utility Contractor specifically waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. This waiver has been specifically and mutually negotiated by the parties.

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF THE CONTRACTOR MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ECONOMIC DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT IF THE CONDITIONS OF SECTION 558.0035 ARE SATISFIED.

## 51.0 E-VERIFY

**51.1** Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, any City contractors shall register with and use the U.S. Department of Homeland Security's E-Verify system, https://e-verify.uscis.gov/emp, to verify the work authorization status of all employees hired on and after January 1, 2021. City Contractors must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the Contractor stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system. Failure to comply with this provision will be a material breach of the contract, and shall result in the immediate termination of the contract without penalty to the City. The City Contractor shall be liable for all costs incurred by the City securing a replacement contract, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable. If the City Contractor utilizes Subcontractors the following shall apply:

**51.2** Contractor shall also require all subcontractors performing work under the Agreement to use the E-Verify system for any employees they may hire during the term of the Agreement.

**51.3** Contractor shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes.

**51.4** Contractor shall provide a copy of all subcontractor affidavits to the City upon receipt and shall maintain a copy for the duration of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**CITY:**

**CITY OF COCOA, FLORIDA:**

By: _____
**Stockton Whitten, City Manager**

**ATTEST:**

**Carie Shealy, City Clerk**

**UTILITY CONTRACTOR:**

**HINTERLAND GROUP, Inc.:**

By: _____
Print Name/Title: Daniel Duke III, President

HINTERLAND GROUP, INC. CORPORATE SEAL FLORIDA

**EXHIBIT "A"**

**SCOPE OF SERVICES**
**UTILITY GENERAL CONSTRUCTION CONTRACTOR**
**AGREEMENT**

The Scope of Services to be provided by the Utility Contractor shall include all phases of underground utility services. The Utility Contractor has already been pre-qualified by City to perform the following:

- Install new water, sewer, and/or reclaim pressure pipe, gravity main, manholes, valves, fire hydrants, service lines, air release valves, and other associated infrastructure and appurtenances.
- Repair and/or replace water, sewer, and/or reclaim pressure pipe, gravity main, manholes, valves, fire hydrants, service lines, air release valves, and other associated infrastructure and appurtenances.
- Repair and/or replace or installation of new piping and associated appurtenances located at the water and wastewater plants and the wellfield
- Perform line stops / install insert valves on various size pipe to include large diameter transmission mains
- The projects will consist of various size pipe consisting of various materials: i.e.: metal, plastic, Asbestos Cement Pipe, and reinforced concrete.
- All work on the City of Cocoa Utility system shall meet the requirements of the City of Cocoa Utilities Technical Provisions and Standard Details
- The Contractor shall include a Critical Path Method Schedule for each project. The requirements will be detailed in the specifications for each project.
- Work shall include any associated restoration, maintenance of traffic, erosion control, clearing and grubbing, or other similar ancillary work to complete the project
- Restoration of FDOT, Brevard County, City of Cocoa, or other local jurisdiction roads (to included driveways, curbing, and sidewalk), storm water systems, and/or other utilities affected by the utility work. The restoration shall be per the governing authority's specifications and requirements
- Contractor shall meet all safety requirements as required by all governing State law, municipal ordinances, OSHA Standards, and as may be necessary to protect life, property, or the work.

Quotes will first be obtained from Utility Contractor prior to commencement of any planned project. The City shall retain the right to refuse any quote for just cause.

For each project Utility Contractor will supply the following:

A. Labor, equipment and material (unless material is supplied by City by mutual agreement)

B. Traffic control: On-site personnel must be certified in FDOT Maintenance of Traffic Level III Work Zone Training.

C. Supervision: On-site personnel in charge must be OSHA Certified Competent Person

D. De-watering

E. As-built drawings: When project is completed

# EXHIBIT "B"

## FORM

## PUBLIC CONSTRUCTION BOND

In compliance with Section 255.05, Florida Statutes

| | |
|---|---|
| **BOND NO.:** | |
| **Contractor Name:** | |
| **Contractor Address:** | |
| **Contractor Phone No.:** | |
| **Surety Company:** | |
| **Surety Agent:** | |
| **Owner Name:** | City of Cocoa |
| **Owner Address:** | 65 Stone Street |
| | Cocoa, Florida 32922 |
| **Owner Phone No.** | (321) 433-8710 |
| **Owner Fax No.** | |
| **Owner Email:** | |
| **Contract Date:** | |
| **Contract Amount:** | $ |
| **Bond Amount:** | $ |
| **Contract No. (if applicable):** | |
| **Description of Work:** | |
| **Project Address:** | |
| **Legal Description:** | |

| | |
|---|---|
| **Bid Number:** | |

**BY THIS BOND,** We,_____., a _____as Principal, and _____ a _____ Corporation as Surety, are hereby bound to the **CITY OF COCOA**, a Florida municipal corporation , herein called Owner, in the sum of **$**_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

**THE CONDITION OF THIS BOND** is that if Principal:

a. Performs the _____Agreement dated _____, 20____, ("Agreement") between Principal and Owner for construction of the _____as specified in the Agreement, the Agreement being made a part of this bond by reference, at the times and in the manner prescribed in this Agreement; and

b. Promptly makes payments to all claimants, as defined in section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement; and

c. Pays Owner all losses, damages, including delay damages, expenses, and costs that Owner sustains because of a default by Principal under the Agreement; and

d. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement and by law including all warranties and guarantees specified in the Agreement, then this bond is to be void; otherwise it remains in full force and effect.

e. In any action against this performance bond, the Owner is entitled to attorney's fees under sections 627.428 and 627.756, Florida Statutes, and Danis Industries Corp. v. Ground Improvement Techniques, 645 So.2d 420 (Fla. 1994) and McCarthy Bros. Co. v. Tilbury Construction, Inc., 849 So.2d 7 (Fla. 1st DCA 2003), including appellate attorney's fees.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

**IN WITNESS WHEREOF,** the said Principal and Surety have assigned and sealed this instrument this _____ day of _____ 20____.

**CONTRACTOR AS PRINCIPAL**

_____., a _____:

_____

(Corporate Seal)

Signature_____

Title_____

**SURETY**

Company:

_____

(Corporate Seal)

Signature_____

Title_____

Approved as to Form:

_____

Cocoa City Attorney

**AGREEMENT FOR UTILITIES**
**GENERAL CONSTRUCTION CONTRACTOR**

**THIS AGREEMENT** is made and entered into this 9th day of November, 2020, by and between the **CITY OF COCOA, FLORIDA**, a Florida Municipal Corporation, hereinafter referred to as "City", located at 65 Stone Street, Cocoa 32922, and **ATLANTIC DEVELOPMENT OF COCOA, Inc.** 2185 West King Street, Cocoa, Florida 32926, hereinafter referred to as "Utility Contractor".

**WITNESSETH:**

**WHEREAS**, City wishes to obtain underground utility services on a continuing basis; and

**WHEREAS**, the City has followed the selection and negotiation process set forth in the Florida's Consultants' Competitive Negotiation Act, Section 287.055, *Florida Statutes;* and

**WHEREAS**, Utility Contractor participated in the selection and negotiation process and Utility Contactor was one of several contractors chosen by the City Council at a duly held meeting on October 27, 2020 to perform future services on an as needed basis; and

**WHEREAS**, Utility Contractor is willing to provide such underground utility services to the City under the terms and conditions stated herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

## 1.0 TERM AND DEFINITIONS

**1.1** Unless sooner terminated by either Party pursuant to the terms and conditions herein, this Agreement shall terminate on the third (3rd) anniversary of the Effective Date. This Agreement may be renewed by mutual agreement of the Parties for a maximum of two (2) separate two (2) year renewal terms.

**1.2** The terms and conditions of any Task Authorization, as described in Section 2 hereof, shall be as set forth in such Task Authorization. Any Task Authorization in effect at the termination of this Agreement shall remain in effect until completion of said Task Authorization, and all of the terms and conditions of this Agreement shall survive until completion of all Task Authorizations.

**1.3 Definitions**. The following words and phrases used in this Agreement shall have the following meaning ascribed to them unless the context clearly indicates otherwise:

A. "Agreement" or "Contract" shall be used interchangeably and shall refer to this Agreement, as amended from time to time, which shall constitute authorization for the Utility Contractor to provide the construction services approved by Task Authorization by the City.

B. "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not go into effect until said date.

C. "Utility Contractor" shall mean **Atlantic Development of Cocoa Inc.,** and its principals, employees, resident project representatives (and assistants).

D. "Public Record" shall have the meaning given in Section 119.011(1), *Florida Statutes*.

E. "Reimbursable Expenses" shall mean the actual expenses incurred by Utility Contractor or Utility Contractor's independent professional associates and consultants which are directly related to travel and subsistence at the rates, and under the requirements of, Section 112.061, Florida Statutes, or any other actual expenses the City agrees to reimburse by Task Authorization.

F. "Work" or "Services" shall be used interchangeably and shall include the performance of the work agreed to by the parties in a Task Authorization.

G. "Task Authorization" shall mean a written document approved by the parties pursuant to the procedure outlined in paragraph 2.0 of this Agreement, and any amendments thereto approved pursuant to the procedures outlined in paragraph 3.0 herein, which sets forth the Work to be performed by Utility Contractor under this Agreement.

## 2.0 DESCRIPTION OF SERVICES

**2.1** The City shall make request of Utility Contractor to perform underground utility services on a "Task" basis. The City will communicate with Utility Contractor, verbally or in writing, a general description of the task to be performed. The Utility Contractor will generate a detailed Scope of Work document, prepare a Schedule, add a Not-to-Exceed-Budget or Lump Sum Fee to accomplish the task, and send the thus developed "Task Proposal" to the City. If a site visit by Utility Contractor is needed to generate the scope document, Utility Contractor shall request approval prior to visiting the site. The City will review the Task Proposal, and if the description is mutually acceptable, the parties will enter into a written "Task Authorization". The Scope of Services generally to be provided by the Utility Contractor through a Task Authorization may include any phases of utility construction. These phases are more clearly defined in the attached **Exhibit "A".** Nothing herein shall be construed to guarantee that Utility Contractor will be assigned a Task.

**2.2** The City will issue a Notice to Proceed to the Utility Contractor in the form of a City purchase order. Upon receipt of the signed Task Authorization and a written Notice to Proceed from the City, the Utility Contractor shall perform the services set forth in the Task Authorization.

**2.3** For each Task Authorization in excess of $25,000.00, Utility Contractor shall supply a materials, performance and payment bond(s) in accordance with Florida law and in substantially in conformance with the form attached to the Agreement **Exhibit "B"** and

approved by the City Attorney. The materials, performance, and payment amounts shall be in an amount equal to the total Contract Price for the Work required by the Task Authorization. The issuance of bonds required under this Agreement shall not relieve Utility Contractor of any liability under the Agreement and any applicable Task Authorization. Utility Contractor shall remain jointly and severally liable with any surety issuing a bond under the Task Authorization. The premium for such bonds shall be paid by the Utility Contractor.

## 3.0 CHANGES IN THE SCOPE OF WORK

**3.1** City may make changes in the Services at any time by giving written notice to Utility Contractor. If such changes increase (additional services) or decrease or eliminate any amount of work, City and Utility Contractor will negotiate any change in total cost or schedule modifications. If the City and Utility Contractor approve any change(s), the Task Authorization will be modified in writing to reflect the change(s); and Utility Contractor shall be compensated for said service(s) in accordance with the terms of Article 5.0 herein. All change orders shall be authorized in writing by City's and Utility Contractor's designated representative.

**3.2** All of City's said Task Authorizations and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

## 4.0 SCHEDULE; LIQUIDATED DAMAGES

**4.1** Utility Contractor shall perform services in conformance with the mutually agreed schedule set forth in the negotiated Task Authorization. The parties acknowledge that the agreed upon schedule provided in this Section includes consideration of adverse weather conditions common to Central Florida including the possibility of hurricanes and tropical storms. Utility Contractor shall complete all of said services in a timely manner and will keep City apprised of the status of work on at least a weekly basis or as otherwise reasonably requested by the City. Should Utility Contractor fall behind the agreed upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

**4.2** No extension for completion of services shall be granted to Utility Contractor without City's prior written consent, except as provided in Sections 3.1 and 20.1 herein.

**4.3** Unless otherwise expressly provided in the Task Authorization, City and Utility Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss if the Work required by a Task Authorization is not substantially complete within the time specified therein, plus any extensions thereof allowed in accordance with a written change order. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, City and Utility Contractor agree that as liquidated damages for delay (but not as a penalty) Utility Contractor shall pay City five hundred dollars ($500.00) per day for each day that expires after the time specified in the applicable Task Authorization for both substantial and final completion until the work is completed within said time period, and that City has paid to the Utility Contractor the consideration of ten ($10.00) dollars as consideration for this provision.

The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Utility Contractor to the City under this Agreement and applicable Task Authorization, and shall not preclude the recovery of damages by the City under other provisions of the Agreement, except claims related to Utility Contractor's delays in substantial completion. The City's right to receive liquidated damages shall in no manner affect the City's right to terminate the Agreement or any applicable Task Authorization, as provided in this Agreement or elsewhere in the Task Authorization. The City's exercise of the right to terminate shall not release the Utility Contractor from the obligation to pay said liquidated damages.

When the City reasonably believes (i) that substantial completion will be inexcusably delayed; or (ii) that the Utility Contractor will fail to achieve final completion by the date of final completion, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Utility Contractor the daily amount specified for liquidated damages for each calendar day of the unexcused delay. If and when the Utility Contractor overcomes the delay in timely achieving substantial completion or final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Utility Contractor those funds withheld, but no longer applicable, as liquidated damages.

## 5.0 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF UTILITY CONTRACTOR

**5.1 General Services.** For basic and additional Services performed by Utility Contractor's principals, employees, and resident project representatives (and assistants) pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Utility Contractor an amount equal to that agreed upon by the parties for a particular Task Authorization.

**5.2 Additional Services Performed by Professional Associates and Consultants.** For additional Services and Reimbursable Expenses of independent professional associates and consultants employed by Utility Contractor to render additional Services pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Utility Contractor an amount equal to that billed Utility Contractor by the independent professional associates and consultants multiplied by a factor of 1.10. Prior to payment by the City, the Utility Contractor shall submit to the City a copy of any written invoice received by Utility Contractor from all independent professional associates and consultants which clearly evidences the amount billed by the independent professional associates and consultants for additional Services and any Reimbursable Expenses.

**5.3 Witness Services.** For witness or expert services rendered by Utility Contractor's principals, employees, resident project representatives (and assistants), and independent professional associates and consultants on behalf of the City in any litigation, arbitration, or other legal or interested administrative proceeding in which the City is a named interested party, City agrees to pay the Utility Contractor or independent professional associate or consultant, which is used as a witness or expert, an amount equal to that agreed upon by the party for a particular Task Authorization.

**5.4 Reimbursable Expenses.** In addition to payments provided in paragraphs 5.1, 5.2 and 5.3 above, City agrees to pay Utility Contractor the actual cost of all Reimbursable Expenses incurred in connection with any Task Authorization.

**5.5 Payment.** Upon receipt of a proper invoice from Utility Contractor, the City agrees to pay the Utility Contractor the invoice amount providing said amount accurately reflects the terms and conditions of this Agreement and any applicable Task Authorization. Invoices may only be submitted on a monthly basis unless otherwise agreed by the City. Unless otherwise agreed in writing by the City, there shall be no other compensation paid to the Utility Contractor and its principals, employees, resident project representatives (and assistants), and independent professional associates and consultants in the performance of Work under this Agreement. The City agrees to make all payments due within thirty (30) days of receipt of a proper invoice delivered by Utility Contractor.

**5.6 Witholding Payments.** Progress payments may be withheld if:

a. Work is found defective and not remedied;

b. Utility Contractor does not make prompt and proper payments to subcontractors;

c. Utility Contractor does not make prompt and proper payments for labor, materials, or equipment furnished him;

d. Another Contractor is damaged by an act for which Utility Contractor is responsible;

e. Claims or liens are filed on the job; or

f. In the opinion of the City, Utility Contractor's work is not progressing satisfactorily.

5.7 **Final Payment.** The City shall withhold up to 5% of the Contract Price set forth in any Task Authorization throughout the subject project in accordance with the Local Government Prompt Payment Act ("Act"). City shall promptly make payment to the Utility Contractor unless the City has grounds, under the Act, for withholding the payment of the retainage. The remaining retainage amount withheld shall be released with the Final Payment after the issuance of the Final Completion Certificate. City shall make final payment to Utility Contractor within thirty (30) days after the work is fully and properly completed, if the contract has been fully and timely performed, but subject to the condition that final payment shall not be due until Utility Contractor has delivered to CITY a complete release of liens arising out of the Task Authorization, or receipt of releases of lien fully covering all labor, materials and equipment for which a lien could be filed, or in the alternative a bond satisfactory to City indemnifying him against such claims.

By making payments, City does not waive claims including but not limited to those relating to:

a. Faulty work appearing after substantial completion has been granted;

b. Work that does not comply with the Task Authorization and this Agreement;

c. Outstanding claims of liens; or

d. Failure of Utility Contractor to comply with any special guarantees required by the Agreement and applicable Task Authorization.

## 6.0 RIGHT TO INSPECTION

**6.1** City or its affiliates shall at all times have the right to review or observe the services performed by Utility Contractor. The City shall be given free access to the worksite at all times during work preparation and progress. The City's Project Manager is not obligated to make exhaustive or continuous onsite inspections to perform his or her duties of checking and reporting on work progress, and any such inspections shall not waive City's claim regarding defective work by Utility Contractor.

**6.2** No inspection, review, or observation shall relieve Utility Contractor of its responsibility under this Agreement. The City will not be responsible for the means of construction, or for the sequences, methods and procedures used therein, or for the Utility Contractor's failure to perform the work in accordance with the applicable Task Authorization and this Agreements.

## 7.0 PROGRESS MEETING

**7.1** City's Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required by the City, during the term of work entered into under this Agreement. Utility Contractor's Project Manager and all other appropriate personnel shall attend such meetings as designated by the City's Project Manager. The City's review, inspection, or approval of any Work, applications for payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with the City's scope and requirements for the Project. No review, inspection, or approval by the City of such Work or documents shall relieve the Utility Contractor of its responsibility for the performance of its obligations under the applicable Task Authorization or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, design document, or construction document shall not relieve Utility Contractor of responsibility for the performance of its obligations under this Agreement and applicable Task Authorization. Payment by the City pursuant to the this Agreement shall not constitute a waiver of any of the City's rights under this Agreement or at law, and the Utility Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City. Notwithstanding the foregoing, prompt written notice shall be given by the City or City Project Manager to the Utility Contractor if the City becomes aware of any fault or defect in the subject Project or non-conformance with this Agreement and applicable Task Authorization. Furthermore, the City shall not have control or charge of construction means, methods,

techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor shall the Utility Contractor, for any of the foregoing purposes, be deemed the agent of the City.

**8.0 RESPONSIBILITIES OF CONTRACTOR** The Utility Contractor's duties and rights in connection with any Task Authorization issued by the City herein are as follows:

**8.1** Responsibility for Supervision and Construction. Utility Contractor shall be solely responsible for all construction under the Task Authorization, including the techniques, sequences, procedures and means, for the coordination of all work. Utility Contractor shall supervise and direct the work, and give it all attention necessary for such proper supervision and direction.

**8.2** Discipline and Employment. Utility Contractor shall maintain at all times strict discipline among his employees, and he agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he was employed.

**8.3** Furnishing of Labor, Materials, etc. Utility Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment and machinery, utilities, including water, transportation, and all other facilities and work necessary for the proper completion of work on the project in accordance with this Agreement and Task Authorization.

**8.4** Payment of Taxes: Procurement of Licenses and Permits. Utility Contractor shall secure all licenses and permits necessary for proper completion of the work, paying the fees thereof. Utility Contractor warrants that it (and subcontractors or tradesmen, if authorized in the Task Authorization) hold or will secure all trade or professional licenses required by law for the Utility Contractor to undertake the Work required by the Task Authorization.

**8.5** Guarantee. The Utility Contractor hereby guarantees the Work to the full extent provided in the Task Authorization and any applicable Plans, Specifications, General Conditions, Special Conditions and other contract documents. The Utility Contractor shall remove, replace and/or repair at its own expense and at the convenience of the City any faulty, defective or improper Work, materials or equipment discovered within one (1) year from the date of the acceptance of the project as a whole by the City or for such longer period as may be provided in the applicable Task Authorization, Plans, Specifications, General Conditions, Special Conditions or other contract documents. Without limiting the generality of the foregoing, the Utility Contractor warrants to the City, that all materials and equipment furnished under this Agreement and Task Authorizations will be of first class quality and new, unless otherwise required or permitted by the applicable Task Authorization, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Task Authorization. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Agreement and in the Task Authorization shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Furthermore, Utility Contractor will provide written guarantee for work and materials for a minimum of one (1) calendar year after acceptance by City unless a longer time period is

required by a Task Authorization. The one (1) period is not a limitation upon manufacturer warranties or Utility Contractor's payment and performance Bond(s).

**8.6** Preparation/Sufficiency of Site. The Utility Contractor shall, among other things, and as applicable: (i) visit and thoroughly inspect the Project Sites and any structure(s) or other man-made features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (ii) familiarize itself with any provided survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components, and other attributes having or likely to have an impact on the Project; (iii) familiarize itself with the City's layout and design requirements, conceptual design objectives, and budget for the Projects; (iv) familiarize itself with pertinent Project dates, including the Project Schedule; (v) review and analyze all Project geotechnical, hazardous substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations, and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involve modifications to any existing structure(s) or other man-made feature(s) on the Project Site, the Utility Contractor shall also review all as-built and record drawings, plans, and specifications of which the Utility Contractor has been informed by the City, and shall thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by the Utility Contractor resulting from its failure to familiarize itself with the Project Sites or pertinent documents shall be deemed waived.

**8.7** Safety. Utility Contractor shall be solely and absolutely responsible and assume all liability for the safety and supervision of its principals, employees, resident project representatives (and assistants) while performing Services provided hereunder.

## 9.0 REASONABLE ACCESS

**9.1** During the term of this Agreement, City shall grant Utility Contractor reasonable access to the City's premises, records, and files for purposes of fulfilling its obligations under this Agreement.

## 10.0 INSURANCE

**10.1 Liability Amounts.** During the term of this Agreement, Utility Contractor shall be responsible for providing the types of insurance and limits of liability as set forth below.

A. Professional Liability: If professional services are rendered under any Task Authorization, proof of professional liability insurance shall be provided to the City for the minimum amount of $1,000,000 as the combined single limit for each occurrence.

B. The Utility Contractor shall maintain comprehensive general liability insurance in the minimum amount of $2,000,000 as the combined single limit for each occurrence to protect the Utility Contractor from claims of property damages which may arise from any Services performed under this Agreement whether such Services are performed by the Utility Contractor or by anyone directly employed by or contracting with the Utility Contractor.

C. The Utility Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of $1,000,000 combined single limit bodily injury and minimum $50,000 property damage as the combined single limit for each occurrence to protect the Utility Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Utility Contractor or by anyone directly or indirectly employed by the Utility Contractor.

D. Utility Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing Work for the City pursuant to this Agreement.

**10.2 Special Requirements.** Current, valid insurance policies meeting the requirements herein identified shall be maintained during the term of this Agreement. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date. There shall also be a 30-day advance written notification to the City in the event of cancellation or modification of any stipulated insurance coverage. **With the exception of any required professional insurance policy hereunder, the City shall be an additional named insured on all stipulated insurance policies as its interest may appear, from time to time.**

**10.3 Independent Associates and Consultants.** All independent associates and consultants employed by Utility Contractor to perform any Services hereunder shall fully comply with the insurance provisions contained in this paragraph.

## 11.0 COMPLIANCE WITH LAWS AND REGULATIONS

**11.1** Utility Contractor shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of Services under this Agreement.

## 12.0 REPRESENTATIONS

**12.1** Utility Contractor represents that the Services provided hereunder shall conform to all requirements of this Agreement and any Task Authorization, shall be consistent with recognized and sound construction practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the Services rendered.

**12.2** Utility Contractor represents that all principals, employees, and other personnel furnishing such Services shall be qualified and competent to perform the Services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best professional knowledge and judgment.

## 13.0 GUARANTEE AGAINST INFRINGEMENT

**13.1** Utility Contractor guarantees that all Services performed under this Agreement shall be free from claims of patent, copyright, and trademarks infringement. Notwithstanding

any other provision of this Agreement, Utility Contractor shall indemnify, hold harmless, and defend City, its officers, directors, attorneys, employees, agents assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, Services, or other item provided under this Agreement. Notwithstanding the foregoing, Utility Contractor may elect to provide non-infringing services.

## 14.0 DOCUMENTS

**14.1 Public Records.** Pursuant to Section 119.0701, Florida Statutes and other applicable public records laws, Utility Contractor agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics or means of transmission, of Utility Contractor related, directly or indirectly, to the services provided to the City under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record, whether in the possession or control of City or the Utility Contractor. Said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics or means of transmission of Utility Contractor are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the City's designated custodian of public records.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS/CITY CLERK AT (321) 433-8484, 65 STONE STREET, COCOA, FLORIDA 32922.**

Utility Contractor is required to and agrees to comply with public records laws. Utility Contractor shall keep and maintain all public records required by City to perform the services as agreed to herein. Utility Contractor shall provide the City, upon request from the CITY CLERK, copies of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. Utility Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term. Upon completion of the Agreement, Utility Contractor shall transfer to City, at no cost, all public records in possession of the Utility Contractor, provided the transfer is requested in writing by the City Clerk. Upon such transfer, Utility Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. However, if the City Clerk does not request that the public records be transferred, the Utility Contractor shall continue to keep and maintain the public records upon completion of the Agreement and shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from the City Clerk, in a format that is compatible with the information technology systems of City. Should the City not possess public records relating to this Agreement which are requested to be inspected or copied

by the City or any other person, the City shall immediately notify Utility Contractor of the request and the Utility Contractor shall then provide such records to the City or allow the records to be inspected or copied within a reasonable time. If the Utility Contractor does not comply with a public records request, the City may enforce this Section to the extent permitted by law. Utility Contractor acknowledges that if the Utility Contractor does not provide the public records to the City within a reasonable time, the Utility Contractor may be subject to penalties under Section 119.10, Florida Statutes. The Utility Contractor acknowledges that if a civil action is filed against the Utility Contractor to compel production of public records relating to this Agreement, the court may assess and award against Utility Contractor the reasonable costs of enforcement, including reasonable attorney fees. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Utility Contractor, be open and freely exhibited to the City for the purpose of examination, audit or otherwise. Failure by Utility Contractor to grant such public access and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the City upon delivery of a written notice of cancellation. If the Utility Contractor fails to comply with this Section, and the City must enforce this Section, or the City suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Utility Contractor failure to comply with this Section, the City shall collect from Utility Contractor prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Utility Contractor. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Utility Contractor failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

**14.2 Reuse of Documents.** All documents, including but not limited to, drawings, specifications, and data, or programs stored electronically or otherwise, prepared by the Utility Contractor and its independent contractors and associates pursuant to this Agreement or related exclusively to the Services described herein may be reused by the City for any reason or purpose at anytime. However, the City agrees that the aforesaid documents are not intended or represented to be suitable for reuse by the City or others on any undertaking other than the Work outlined in this Agreement. Any reuse for an undertaking other than for the Work without verification or adoption by the Utility Contractor, or its independent contractors and associates if necessary, to specific purposes intended will be at the City's sole risk and without liability or legal exposure to the Utility Contractor.

**14.3** The Utility Contractor acknowledges that the City is a Florida Municipal Corporation and subject to the Florida Public Records Law. Utility Contractor agrees that to the extent any document produced by Utility Contractor under this Agreement constitutes a Public Record, Utility Contractor shall comply with the Florida Public Records Law.

## 15.0 ASSIGNMENT

**15.1** Utility Contractor shall not assign or subcontract this Agreement, any Task Authorization hereunder, or any rights or any monies due or to become due hereunder without the prior, written consent of City.

**15.2** If upon receiving written approval from City, any part of this Agreement is subcontracted by Utility Contractor, Utility Contractor shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

**15.3** If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Utility Contractor who shall take immediate steps to remedy the situation.

**15.4** If any part of this Agreement is subcontracted by Utility Contractor, prior to the commencement of any Work by the subcontractor, Utility Contractor shall require the subcontractor to provide City and its affiliates with insurance coverage as set forth by the City.

## 16.0 INDEPENDENT CONTRACTOR

**16.1** At all times during the term of this Agreement, Utility Contractor shall be considered an independent contractor and not an employee of the City.

## 17.0 TERMINATION; DEFAULT BY UTILITY CONTRACTOR AND CITY'S REMEDIES

**17.1** The City reserves the right to revoke and terminate this Agreement and rescind all rights and privileges associated with this Agreement, without penalty, at any time with or without cause. Without limitation, the following shall be considered cause for terminating this Agreement and shall constitute a default hereunder:

**17.2** Utility Contractor defaults in the performance of any material covenant or condition of this Agreement and does not cure such other default within thirty (30) calendar days after written notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the Utility Contractor shall have such time as is reasonably necessary to remedy the default, provided the Utility Contractor promptly takes and diligently pursues such actions as are necessary.

**17.3** Utility Contractor is adjudicated bankrupt or makes any assignment for the benefit of creditors or Utility Contractor becomes insolvent, or is unable or unwilling to pay its debts; or

**17.4** Utility Contractor has acted negligently, as defined by general and applicable law, in performing the Work hereunder; or

**17.5** Utility Contractor has committed any act of fraud upon the City; or

**17.6** Utility Contractor has made a material misrepresentation of fact to the City while performing its obligations under this Agreement.

**17.7** Utility Contractor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement without prejudice to any other right or remedy City may have under this Agreement.

**17.8** Utility Contractor fails to comply with any condition or provision of this Agreement including any Task Authorization.

**17.9** Notwithstanding the aforementioned, in the event of a default by Utility Contractor, the City shall have the right to exercise any other remedy the City may have by operation of law, without limitation, and without any further demand or notice. In the event of such termination, City shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for Work properly performed prior to the effective date of termination. Additionally, in the event of such termination upon default and breach of this Agreement, the City may take possession of the Project Site and of all materials, tools, and appliances thereon and finish the work by whatever method the City may deem expedient. Any completed services performed by Utility Contractor under this Agreement shall, at the option of the City, become the City's property and Utility Contractor shall be entitled to receive equitable compensation for any Work completed to the satisfaction of the City. The Utility Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement, and the City may withhold any payments to Utility Contractor for the purpose of setoff until such time as the amount of damages due to the City from Utility Contractor can be determined.

## 18.0 FORCE MAJEURE

**18.1** Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; plague; pandemic; flood; windstorm; explosion; riot; ware; sabotage; strikes; extraordinary breakdown of or damage to City's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this Agreement.

## 19.0 GOVERNING LAW & VENUE

**19.1** This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any state action or litigation shall be Brevard County, Florida. Venue for any federal action or litigation shall be Orlando, Florida.

**19.2** The parties agree that should any dispute arise between them regarding the terms or performance of this Agreement, both parties will participate in mediation. The parties agree to equally share the cost of the mediator. Should the parties fail to resolve their differences through mediation, then any cause of action filed hereunder shall be filed in the Circuit or County Court for Brevard County, Florida.

## 20.0 HEADINGS

**20.1** Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

## 21.0 SEVERABILITY

**21.1** In the event any portion or part of thereof this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise by fully enforceable.

## 22.0 WAIVER AND ELECTION OF REMEDIES

**22.1** Waiver by either party of any term, condition or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future.

**22.2** No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

## 23.0 THIRD PARTY RIGHTS

**23.1** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Utility Contractor.

## 24.0 PROHIBITION AGAINST CONTINGENT FEES

**24.1** Utility Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Utility Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Utility Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

## 25.0 ENTIRE AGREEMENT

**25.1**This Agreement, including any Task Authorizations and Schedules, Attachments, Appendix's and Exhibits attached hereto, constitute the entire agreement between City and Utility Contractor with respect to the Services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. The terms and conditions of this Agreement shall be deemed automatically incorporated into any Task Authorization approved and executed hereunder regardless if the Task Authorization references this Agreement.

## 26.0 NO JOINT VENTURE

**26.1** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties; and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

## 27.0 ATTORNEY'S FEES

**27.1** Should either party bring an action to enforce any of the terms of this Agreement, each party shall bear its own costs and expenses of such action including, but not limited to, reasonable attorney's fees, whether at settlement, trial or on appeal.

## 28.0 COUNTERPARTS

**28.1** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

## 29.0 AGREEMENT INTERPRETATION; DRAFTING

**29.1** At its discretion, during the course of the work, should any errors, ambiguities or discrepancies be found in the Agreement or specifications, the City at its sole discretion will interpret the intent of the Agreement and work descriptions and the Utility Contractor hereby agrees to abide by the City's interpretation and agrees to carry out the work in accordance with the decision of the City. When the material, article or equipment is designated by a brand name and more than one brand name is listed, it will be understood that the work is based on one brand name only. The Utility Contractor will be responsible for all coordination necessary to accommodate the material, article or equipment being provided without additional cost to the City. A substitute material, article or equipment is allowed if it is reasonably equivalent to the brand name specified. The City has full discretion to decide whether a substitute is reasonably equivalent. Utility Contractor must notify the City prior to use of the substitute for a specified brand name and allow the City to make a determination before Utility Contractor uses the substitute.

**29.2** City and Utility Contractor each represent that they have both shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties in a court of competent jurisdiction, except as provided in Section 29.1.

## 30.0 NON-DISCRIMINATION

**30.1** Utility Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

## 31.0 PUBLIC ENTITY CRIMES

**31.1** As provided in §287.132 and §287.133, *Florida Statutes*, by entering into this Contract or performing any work in furtherance hereof, the Utility Contractor certifies that it, its affiliates, suppliers, subcontractors and Contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by §287.133(3)(1), *Florida Statutes*.

## 32.0 CODE REQUIREMENTS

**32.1** The Utility Contractor and its subcontractors on any project must be familiar with all applicable Federal, State, County, City and Local Laws, Regulations or Codes and be governed accordingly as they will apply to the project and the actions or operations of those engaged in the work or concerning materials used. Utility Contractor shall ask for and receive any required inspections.

## 33.0 TESTING

**33.1** The Utility Contractor shall be responsible for all tests and testing required by this Contract, unless otherwise specified. All testing shall be done in the presence of a representative of the City. The City reserves the right to test all materials, products, installations and equipment.

**33.2** All pipelines will be placed in satisfactory operating condition by the Utility Contractor prior to final payment, and the Utility Contractor shall furnish a letter addressed to the City advising that the completed Work has been installed in accordance with the plans and specifications of this Contract and that all items are in proper operating condition.

## 34.0 CITY'S RIGHT TO STOP WORK

**34.1** If the Utility Contractor persistently fails or refuses to perform the Work in accordance with the contract documents, the City shall have the right, but not an obligation, to order the Utility Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that the Work be resumed. In such event, the Utility Contractor shall immediately obey such order. A stop work directive provided under this paragraph shall not entitle the Utility Contractor to an extension of the completion date.

## 35.0 CITY'S RIGHT TO PERFORM WORK

**35.1** If the Utility Contractor's Work is stopped by City, or if the Utility Contractor persistently fails or refuses to perform the Work in accordance with the contract documents, and the Utility Contractor fails within three (3) working days of such stoppage, failure, or refusal, to provide adequate assurance to the City that the cause of such stoppage, failure, or refusal will be

eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against Utility Contractor, proceed to carry out the subject Work. In such a situation, an appropriate change order shall be issued deducting from the contract price the cost of correcting the subject deficiencies, plus compensation for the City's Consultant's additional services and expenses necessitated thereby, if any. If the unpaid portion of the contract price is insufficient to cover the amount due the City, the Utility Contractor shall pay the difference to the City.

## 36.0 EMERGENCIES

**36.1** All emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Utility Contractor, without special instruction or authorization from the City or the City's authorized representative, is obligated to immediately act to prevent threatened damage, injury, or loss. The Utility Contractor shall give the City's authorized representative(s) written documentation within three (3) days from the inception of said emergency if the Utility Contractor believes that any significant changes in the Work or variations from the contract documents have been caused thereby. If the City's authorized representative determines that a change in the contract documents is required because of action taken by the Utility Contractor in response to such an emergency, a change order will be issued to document the consequences of such action.

## 37.0 WARRANTY / GUARANTEE

Unless otherwise required by the specifications, the Utility Contractor shall furnish a one (1) year warranty on all equipment, furnishings, and installation provided hereunder against defect in material and/or workmanship. The warranty shall become effective on the Date of Substantial Completion and acceptance by the City or as otherwise required by law. Should any defect in materials or workmanship, excepting ordinary wear and tear, be discovered during the above-stated warranty period, the Utility Contractor, upon written notice from the City, shall immediately repair or replace same at no cost to the City. The Utility Contractor will not be liable under the above warranty for any defects or damages resulting from unforeseeable causes beyond the control, and without fault or negligence, of the Utility Contractor, such as misuse or neglect by the City, acts of God, fires, floods and hurricanes.

## 38.0 WAIVER OF JURY TRIAL

**38.1** The City and Utility Contractor hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the construction of the work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

## 39.0 BARRICADES

**39.1** The Utility Contractor shall provide all barricades and/or protective safety devices and shall take all necessary precautions to protect all personnel and property. The

Utility Contractor shall remove said barricades and/or safety devices from City property at the completion of the project.

## 40.0 COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT

**40.1** By the submission of its Bid, Bidder certifies that all material, equipment, etc. contained in its bid meets all Occupational Safety and Health Act (OSHA) requirements. Bidder further certifies that if it is the successful Bidder, and any of the material, equipment, etc. delivered is subsequently found to be deficient of any OSHA requirement in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the Bidder. Furthermore, in compliance with Florida law, any item delivered from a Task assigned under this Agreement must be accompanied by a Material Safety Data Sheet (MSDS). The MSDS must include the following information:

A. The chemical name and common name of the toxic substance

B. The hazards or other risks in the use of the toxic substances including:

1. The potential for fire, explosion, corrosion and reactivity
2. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance
3. The primary routes of entry and symptoms of over-exposure

C. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of over-exposure

D. The emergency procedure for spills, fire, disposal and first aid

E. A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information

F. The year and month, if available, that the information was compiled and the name, address and emergency telephone number of the manufacturer responsible for preparing the information

## 41.0 STORAGE, REMOVAL AND DISPOSAL OF SOLID WASTE/CONSTRUCTION DEBRIS

**41.1** The Utility Contractor must comply with all applicable City Codes and solid waste franchise agreements regarding the storage, removal, and disposal of solid waste and construction debris. Prior to performing any Services required hereunder, the Utility Contractor shall contact the City's Utilities Department for information relative to complying with this section.

## 42.0 MATERIALS, INSTALLATION AND PERFORMANCE

**42.1** The Utility Contractor shall be responsible for the provision, installation and performance of all equipment, materials, services, etc. offered in their Bid. The Utility Contractor is in no way relieved of the responsibility for the performance of all equipment furnished or of assuring the timely delivery of materials, equipment, etc. even though it is not of their own manufacture. Unless otherwise specified, material storage shall be on site and within the defined area of the Work and within the Utility Contractor's area of responsibility.

## 43.0 SET UP AND CONNECTIONS

**43.1** All equipment is to be set up, connected to utilities, checked and demonstrated at no charge to the City. The Utility Contractor shall be responsible for all transportation, off-loading, handling, storage and installation of any City-furnished Utility Contractor-installed material and equipment.

## 44.0 SAFETY AND PROTECTION OF PROPERTY

**44.1** The Utility Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, its employees on the Work and all other persons who may be affected thereby; the Work and materials and equipment to be incorporated therein; and all other property at the site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Utility Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, and shall give all notices required by same. This requirement includes, but is not limited to, the United Sates Occupational Safety and Health Act and the Florida Trench Safety Act, *Florida Statute* §553.60.

## 45.0 TAXES

**45.1** The Utility Contractor shall pay all applicable sales, consumer-use, and other similar taxes required by law. The Utility Contractor is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.

## 46.1 ENTIRETY OF CONTRACT

**46.1** The City and the Utility Contractor agree that this Contract sets forth the entire Contract between the parties and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 3.0 – Changes in the Scope of Work.

## 47.0 NOTICE

For Utility Contractor
Atlantic Development of Cocoa, Inc.

2185 West King Street
Cocoa, Florida 32926
Attention: _____
Phone: 321-639-8788

For City:

City of Cocoa/ Utilities Department
Attention: Utilities Director
351 Shearer Blvd.
Cocoa, Florida 32922
(321) 433-8710

**47.1** Either party may change the notice address by providing the other party written notice of the change.

## 48.0 SOVEREIGN IMMUNITY

**48.1** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars ($200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars ($300,000.00). This paragraph shall survive termination of this Agreement.

## 49.0 CORPORATE REPRESENTATIONS BY UTILITY CONTRACTOR

**49.1** Utility Contractor hereby represents and warrants to the City the following:

A. Utility Contractor is duly registered and licensed to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in this Agreement.

B. The undersigned representative of Utility Contractor has the power, authority, and legal right to execute and deliver this Agreement on behalf of Utility Contractor.

## 50.0 INDEMNIFICATION.

**50.1** For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Utility Contractor shall indemnify, hold harmless and defend the City, its officers, agents, officials, representatives, employees, and/or

attorneys against any and all liability, loss, cost, damages, expenses, claim or actions, of whatever type, including but not limited to attorney's fees and suit costs, for trial and appeal, which the City may hereafter sustain, incur or be required to pay, arising out of, wholly or in part, or due to any act or omission of Utility Contractor, its agent(s), vendors, contractors, subcontractor(s), representatives, servants or employees in the execution, performance or non-performance or failure to adequately perform Utility Contractor's obligations pursuant to this Agreement and any and all Task Authorizations hereunder.

**50.2** The indemnification provided above shall obligate the indemnifying party to defend at its own expense or to provide for such defense, at the sole option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City, its officers, agents, officials, representatives, employees, and/or attorneys which may result from the services under this Agreement whether the services be performed by the indemnifying party or anyone directly or indirectly employed or hired by them. In all events the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be subject to and included with this indemnification provided herein, as long as said fees are reasonable. This paragraph shall survive termination of this Agreement.

The Utility Contractor specifically assumes potential liability for actions brought by Utility Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, Utility Contractor specifically waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. This waiver has been specifically and mutually negotiated by the parties.

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF THE CONTRACTOR MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ECONOMIC DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT IF THE CONDITIONS OF SECTION 558.0035 ARE SATISFIED.

**IN WITNESS WHEREOF**, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**CITY:**

**CITY OF COCOA, FLORIDA:**

By: _____
**Stockton Whitten, City Manager**

**ATTEST:**

**Carie Shealy, City Clerk**

SEAL
FLORIDA

**UTILITY CONTRACTOR:**

**Atlantic Development of Cocoa, Inc.:**

By: _____
Print Name/Title: GLENN S. GRIGNON
VICE PRESIDENT

**EXHIBIT "A"**

**SCOPE OF SERVICES**
**UTILITY GENERAL CONSTRUCTION CONTRACTOR**
**AGREEMENT**

The Scope of Services to be provided by the Utility Contractor shall include all phases of underground utility services. The Utility Contractor has already been pre-qualified by City to perform the following:

- Install new water, sewer, and/or reclaim pressure pipe, gravity main, manholes, valves, fire hydrants, service lines, air release valves, and other associated infrastructure and appurtenances.
- Repair and/or replace water, sewer, and/or reclaim pressure pipe, gravity main, manholes, valves, fire hydrants, service lines, air release valves, and other associated infrastructure and appurtenances.
- Repair and/or replace or installation of new piping and associated appurtenances located at the water and wastewater plants and the wellfield
- Perform line stops / install insert valves on various size pipe to include large diameter transmission mains
- The projects will consist of various size pipe consisting of various materials: i.e.: metal, plastic, Asbestos Cement Pipe, and reinforced concrete.
- All work on the City of Cocoa Utility system shall meet the requirements of the City of Cocoa Utilities Technical Provisions and Standard Details
- The Contractor shall include a Critical Path Method Schedule for each project. The requirements will be detailed in the specifications for each project.
- Work shall include any associated restoration, maintenance of traffic, erosion control, clearing and grubbing, or other similar ancillary work to complete the project
- Restoration of FDOT, Brevard County, City of Cocoa, or other local jurisdiction roads (to included driveways, curbing, and sidewalk), storm water systems, and/or other utilities affected by the utility work. The restoration shall be per the governing authority's specifications and requirements
- Contractor shall meet all safety requirements as required by all governing State law, municipal ordinances, OSHA Standards, and as may be necessary to protect life, property, or the work.

Quotes will first be obtained from Utility Contractor prior to commencement of any planned project. The City shall retain the right to refuse any quote for just cause.

For each project Utility Contractor will supply the following:

A. Labor, equipment and material (unless material is supplied by City by mutual agreement)

B. Traffic control: On-site personnel must be certified in FDOT Maintenance of Traffic Level III Work Zone Training.

C. Supervision: On-site personnel in charge must be OSHA Certified Competent Person

D. De-watering

E. As-built drawings: When project is completed

# EXHIBIT "B"

## FORM

## PUBLIC CONSTRUCTION BOND

In compliance with Section 255.05, Florida Statutes

| | |
|---|---|
| **BOND NO.:** | |
| **Contractor Name:** | |
| **Contractor Address:** | |
| **Contractor Phone No.:** | |
| **Surety Company:** | |
| **Surety Agent:** | |
| **Owner Name:** | City of Cocoa |
| **Owner Address:** | 65 Stone Street |
| | Cocoa, Florida 32922 |
| **Owner Phone No.** | (321) 433-8710 |
| **Owner Fax No.** | |
| **Owner Email:** | |
| **Contract Date:** | |
| **Contract Amount:** | $ |
| **Bond Amount:** | $ |
| **Contract No. (if applicable):** | |
| **Description of Work:** | |
| **Project Address:** | |
| **Legal Description:** | |

| | |
|---|---|
| **Bid Number:** | |

**BY THIS BOND,** We,_____., a _____as Principal, and _____ a _____ Corporation as Surety, are hereby bound to the **CITY OF COCOA**, a Florida municipal corporation , herein called Owner, in the sum of **$**_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

**THE CONDITION OF THIS BOND** is that if Principal:

a. Performs the _____Agreement dated _____, 20____, ("Agreement") between Principal and Owner for construction of the _____as specified in the Agreement, the Agreement being made a part of this bond by reference, at the times and in the manner prescribed in this Agreement; and

b. Promptly makes payments to all claimants, as defined in section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement; and

c. Pays Owner all losses, damages, including delay damages, expenses, and costs that Owner sustains because of a default by Principal under the Agreement; and

d. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement and by law including all warranties and guarantees specified in the Agreement, then this bond is to be void; otherwise it remains in full force and effect.

e. In any action against this performance bond, the Owner is entitled to attorney's fees under sections 627.428 and 627.756, Florida Statutes, and Danis Industries Corp. v. Ground Improvement Techniques, 645 So.2d 420 (Fla. 1994) and McCarthy Bros. Co. v. Tilbury Construction, Inc., 849 So.2d 7 (Fla. 1st DCA 2003), including appellate attorney's fees.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

**IN WITNESS WHEREOF,** the said Principal and Surety have assigned and sealed this instrument this _____ day of _____ 2020.

**CONTRACTOR AS PRINCIPAL**

_____., a _____:

_____

(Corporate Seal)

Signature_____

Title_____

**SURETY**

Company:

_____

(Corporate Seal)

Signature_____

Title_____

Approved as to Form:

_____

Cocoa City Attorney

**AGREEMENT FOR UTILITIES**
**GENERAL CONSTRUCTION CONTRACTOR**

**THIS AGREEMENT** is made and entered into this 10TH day of NOVEMBER, 2020, by and between the **CITY OF COCOA, FLORIDA**, a Florida Municipal Corporation, hereinafter referred to as "City", located at 65 Stone Street, Cocoa 32922, and **DANUS UTILITIES, Inc.,** 2320 Beardall Avenue, Sanford, Florida 32771, hereinafter referred to as "Utility Contractor".

**WITNESSETH:**

**WHEREAS**, City wishes to obtain underground utility services on a continuing basis; and

**WHEREAS**, the City has followed the selection and negotiation process set forth in the Florida's Consultants' Competitive Negotiation Act, Section 287.055, *Florida Statutes;* and

**WHEREAS**, Utility Contractor participated in the selection and negotiation process and Utility Contactor was one of several contractors chosen by the City Council at a duly held meeting on October 27, 2020 to perform future services on an as needed basis; and

**WHEREAS**, Utility Contractor is willing to provide such underground utility services to the City under the terms and conditions stated herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

## 1.0 TERM AND DEFINITIONS

**1.1** Unless sooner terminated by either Party pursuant to the terms and conditions herein, this Agreement shall terminate on the third (3rd) anniversary of the Effective Date. This Agreement may be renewed by mutual agreement of the Parties for a maximum of two (2) separate two (2) year renewal terms.

**1.2** The terms and conditions of any Task Authorization, as described in Section 2 hereof, shall be as set forth in such Task Authorization. Any Task Authorization in effect at the termination of this Agreement shall remain in effect until completion of said Task Authorization, and all of the terms and conditions of this Agreement shall survive until completion of all Task Authorizations.

**1.3 Definitions**. The following words and phrases used in this Agreement shall have the following meaning ascribed to them unless the context clearly indicates otherwise:

A. "Agreement" or "Contract" shall be used interchangeably and shall refer to this Agreement, as amended from time to time, which shall constitute authorization for the Utility Contractor to provide the construction services approved by Task Authorization by the City.

B. "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not go into effect until said date.

C. "Utility Contractor" shall mean **Danus Utilities, Inc.,** and its principals, employees, resident project representatives (and assistants).

D. "Public Record" shall have the meaning given in Section 119.011(1), *Florida Statutes*.

E. "Reimbursable Expenses" shall mean the actual expenses incurred by Utility Contractor or Utility Contractor's independent professional associates and consultants which are directly related to travel and subsistence at the rates, and under the requirements of, Section 112.061, Florida Statutes, or any other actual expenses the City agrees to reimburse by Task Authorization.

F. "Work" or "Services" shall be used interchangeably and shall include the performance of the work agreed to by the parties in a Task Authorization.

G. "Task Authorization" shall mean a written document approved by the parties pursuant to the procedure outlined in paragraph 2.0 of this Agreement, and any amendments thereto approved pursuant to the procedures outlined in paragraph 3.0 herein, which sets forth the Work to be performed by Utility Contractor under this Agreement.

## 2.0 DESCRIPTION OF SERVICES

**2.1** The City shall make request of Utility Contractor to perform underground utility services on a "Task" basis. The City will communicate with Utility Contractor, verbally or in writing, a general description of the task to be performed. The Utility Contractor will generate a detailed Scope of Work document, prepare a Schedule, add a Not-to-Exceed-Budget or Lump Sum Fee to accomplish the task, and send the thus developed "Task Proposal" to the City. If a site visit by Utility Contractor is needed to generate the scope document, Utility Contractor shall request approval prior to visiting the site. The City will review the Task Proposal, and if the description is mutually acceptable, the parties will enter into a written "Task Authorization". The Scope of Services generally to be provided by the Utility Contractor through a Task Authorization may include any phases of utility construction. These phases are more clearly defined in the attached **Exhibit "A".** Nothing herein shall be construed to guarantee that Utility Contractor will be assigned a Task.

**2.2** The City will issue a Notice to Proceed to the Utility Contractor in the form of a City purchase order. Upon receipt of the signed Task Authorization and a written Notice to Proceed from the City, the Utility Contractor shall perform the services set forth in the Task Authorization.

**2.3** For each Task Authorization in excess of $25,000.00, Utility Contractor shall supply a materials, performance and payment bond(s) in accordance with Florida law and in

substantially in conformance with the form attached to the Agreement **Exhibit "B"** and approved by the City Attorney. The materials, performance, and payment amounts shall be in an amount equal to the total Contract Price for the Work required by the Task Authorization. The issuance of bonds required under this Agreement shall not relieve Utility Contractor of any liability under the Agreement and any applicable Task Authorization. Utility Contractor shall remain jointly and severally liable with any surety issuing a bond under the Task Authorization. The premium for such bonds shall be paid by the Utility Contractor.

## 3.0 CHANGES IN THE SCOPE OF WORK

**3.1** City may make changes in the Services at any time by giving written notice to Utility Contractor. If such changes increase (additional services) or decrease or eliminate any amount of work, City and Utility Contractor will negotiate any change in total cost or schedule modifications. If the City and Utility Contractor approve any change(s), the Task Authorization will be modified in writing to reflect the change(s); and Utility Contractor shall be compensated for said service(s) in accordance with the terms of Article 5.0 herein. All change orders shall be authorized in writing by City's and Utility Contractor's designated representative.

**3.2** All of City's said Task Authorizations and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

## 4.0 SCHEDULE; LIQUIDATED DAMAGES

**4.1** Utility Contractor shall perform services in conformance with the mutually agreed schedule set forth in the negotiated Task Authorization. The parties acknowledge that the agreed upon schedule provided in this Section includes consideration of adverse weather conditions common to Central Florida including the possibility of hurricanes and tropical storms. Utility Contractor shall complete all of said services in a timely manner and will keep City apprised of the status of work on at least a weekly basis or as otherwise reasonably requested by the City. Should Utility Contractor fall behind the agreed upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

**4.2** No extension for completion of services shall be granted to Utility Contractor without City's prior written consent, except as provided in Sections 3.1 and 20.1 herein.

**4.3** Unless otherwise expressly provided in the Task Authorization, City and Utility Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss if the Work required by a Task Authorization is not substantially complete within the time specified therein, plus any extensions thereof allowed in accordance with a written change order. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, City and Utility Contractor agree that as liquidated damages for delay (but not as a penalty) Utility Contractor shall pay City five hundred dollars ($500.00) per day for each day that expires after the time specified in the applicable Task Authorization for both substantial and final completion until the work is

completed within said time period, and that City has paid to the Utility Contractor the consideration of ten ($10.00) dollars as consideration for this provision.

The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Utility Contractor to the City under this Agreement and applicable Task Authorization, and shall not preclude the recovery of damages by the City under other provisions of the Agreement, except claims related to Utility Contractor's delays in substantial completion. The City's right to receive liquidated damages shall in no manner affect the City's right to terminate the Agreement or any applicable Task Authorization, as provided in this Agreement or elsewhere in the Task Authorization. The City's exercise of the right to terminate shall not release the Utility Contractor from the obligation to pay said liquidated damages.

When the City reasonably believes (i) that substantial completion will be inexcusably delayed; or (ii) that the Utility Contractor will fail to achieve final completion by the date of final completion, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Utility Contractor the daily amount specified for liquidated damages for each calendar day of the unexcused delay. If and when the Utility Contractor overcomes the delay in timely achieving substantial completion or final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Utility Contractor those funds withheld, but no longer applicable, as liquidated damages.

## 5.0 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF UTILITY CONTRACTOR

**5.1 General Services.** For basic and additional Services performed by Utility Contractor's principals, employees, and resident project representatives (and assistants) pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Utility Contractor an amount equal to that agreed upon by the parties for a particular Task Authorization.

**5.2 Additional Services Performed by Professional Associates and Consultants.** For additional Services and Reimbursable Expenses of independent professional associates and consultants employed by Utility Contractor to render additional Services pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Utility Contractor an amount equal to that billed Utility Contractor by the independent professional associates and consultants multiplied by a factor of 1.10. Prior to payment by the City, the Utility Contractor shall submit to the City a copy of any written invoice received by Utility Contractor from all independent professional associates and consultants which clearly evidences the amount billed by the independent professional associates and consultants for additional Services and any Reimbursable Expenses.

**5.3 Witness Services.** For witness or expert services rendered by Utility Contractor's principals, employees, resident project representatives (and assistants), and independent professional associates and consultants on behalf of the City in any litigation, arbitration, or other legal or interested administrative proceeding in which the City is a named interested party, City agrees to pay the Utility Contractor or independent professional associate or consultant, which is used as a witness or expert, an amount equal to that agreed upon by the party for a particular Task Authorization.

**5.4 Reimbursable Expenses.** In addition to payments provided in paragraphs 5.1, 5.2 and 5.3 above, City agrees to pay Utility Contractor the actual cost of all Reimbursable Expenses incurred in connection with any Task Authorization.

**5.5 Payment.** Upon receipt of a proper invoice from Utility Contractor, the City agrees to pay the Utility Contractor the invoice amount providing said amount accurately reflects the terms and conditions of this Agreement and any applicable Task Authorization. Invoices may only be submitted on a monthly basis unless otherwise agreed by the City. Unless otherwise agreed in writing by the City, there shall be no other compensation paid to the Utility Contractor and its principals, employees, resident project representatives (and assistants), and independent professional associates and consultants in the performance of Work under this Agreement. The City agrees to make all payments due within thirty (30) days of receipt of a proper invoice delivered by Utility Contractor.

**5.6 Witholding Payments.** Progress payments may be withheld if:

a. Work is found defective and not remedied;

b. Utility Contractor does not make prompt and proper payments to subcontractors;

c. Utility Contractor does not make prompt and proper payments for labor, materials, or equipment furnished him;

d. Another Contractor is damaged by an act for which Utility Contractor is responsible;

e. Claims or liens are filed on the job; or

f. In the opinion of the City, Utility Contractor's work is not progressing satisfactorily.

5.7 **Final Payment.** The City shall withhold up to 5% of the Contract Price set forth in any Task Authorization throughout the subject project in accordance with the Local Government Prompt Payment Act ("Act"). City shall promptly make payment to the Utility Contractor unless the City has grounds, under the Act, for withholding the payment of the retainage. The remaining retainage amount withheld shall be released with the Final Payment after the issuance of the Final Completion Certificate. City shall make final payment to Utility Contractor within thirty (30) days after the work is fully and properly completed, if the contract has been fully and timely performed, but subject to the condition that final payment shall not be due until Utility Contractor has delivered to CITY a complete release of liens arising out of the Task Authorization, or receipt of releases of lien fully covering all labor, materials and equipment for which a lien could be filed, or in the alternative a bond satisfactory to City indemnifying him against such claims.

By making payments, City does not waive claims including but not limited to those relating to:

a. Faulty work appearing after substantial completion has been granted;

b. Work that does not comply with the Task Authorization and this Agreement;

c. Outstanding claims of liens; or

d. Failure of Utility Contractor to comply with any special guarantees required by the Agreement and applicable Task Authorization.

## 6.0 RIGHT TO INSPECTION

**6.1** City or its affiliates shall at all times have the right to review or observe the services performed by Utility Contractor. The City shall be given free access to the worksite at all times during work preparation and progress. The City's Project Manager is not obligated to make exhaustive or continuous onsite inspections to perform his or her duties of checking and reporting on work progress, and any such inspections shall not waive City's claim regarding defective work by Utility Contractor.

**6.2** No inspection, review, or observation shall relieve Utility Contractor of its responsibility under this Agreement. The City will not be responsible for the means of construction, or for the sequences, methods and procedures used therein, or for the Utility Contractor's failure to perform the work in accordance with the applicable Task Authorization and this Agreements.

## 7.0 PROGRESS MEETING

**7.1** City's Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required by the City, during the term of work entered into under this Agreement. Utility Contractor's Project Manager and all other appropriate personnel shall attend such meetings as designated by the City's Project Manager. The City's review, inspection, or approval of any Work, applications for payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with the City's scope and requirements for the Project. No review, inspection, or approval by the City of such Work or documents shall relieve the Utility Contractor of its responsibility for the performance of its obligations under the applicable Task Authorization or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, design document, or construction document shall not relieve Utility Contractor of responsibility for the performance of its obligations under this Agreement and applicable Task Authorization. Payment by the City pursuant to the this Agreement shall not constitute a waiver of any of the City's rights under this Agreement or at law, and the Utility Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City. Notwithstanding the foregoing, prompt written notice shall be given by the City or City Project Manager to the Utility Contractor if the City becomes aware of any fault or defect in the subject Project or non-conformance with this Agreement and applicable Task Authorization. Furthermore, the City shall not have control or charge of construction means, methods,

techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor shall the Utility Contractor, for any of the foregoing purposes, be deemed the agent of the City.

**8.0 RESPONSIBILITIES OF CONTRACTOR** The Utility Contractor's duties and rights in connection with any Task Authorization issued by the City herein are as follows:

**8.1** Responsibility for Supervision and Construction. Utility Contractor shall be solely responsible for all construction under the Task Authorization, including the techniques, sequences, procedures and means, for the coordination of all work. Utility Contractor shall supervise and direct the work, and give it all attention necessary for such proper supervision and direction.

**8.2** Discipline and Employment. Utility Contractor shall maintain at all times strict discipline among his employees, and he agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he was employed.

**8.3** Furnishing of Labor, Materials, etc. Utility Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment and machinery, utilities, including water, transportation, and all other facilities and work necessary for the proper completion of work on the project in accordance with this Agreement and Task Authorization.

**8.4** Payment of Taxes: Procurement of Licenses and Permits. Utility Contractor shall secure all licenses and permits necessary for proper completion of the work, paying the fees thereof. Utility Contractor warrants that it (and subcontractors or tradesmen, if authorized in the Task Authorization) hold or will secure all trade or professional licenses required by law for the Utility Contractor to undertake the Work required by the Task Authorization.

**8.5** Guarantee. The Utility Contractor hereby guarantees the Work to the full extent provided in the Task Authorization and any applicable Plans, Specifications, General Conditions, Special Conditions and other contract documents. The Utility Contractor shall remove, replace and/or repair at its own expense and at the convenience of the City any faulty, defective or improper Work, materials or equipment discovered within one (1) year from the date of the acceptance of the project as a whole by the City or for such longer period as may be provided in the applicable Task Authorization, Plans, Specifications, General Conditions, Special Conditions or other contract documents. Without limiting the generality of the foregoing, the Utility Contractor warrants to the City, that all materials and equipment furnished under this Agreement and Task Authorizations will be of first class quality and new, unless otherwise required or permitted by the applicable Task Authorization, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Task Authorization. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Agreement and in the Task Authorization shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Furthermore, Utility Contractor will provide written guarantee for work and materials for a minimum of one (1) calendar year after acceptance by City unless a longer time period is

required by a Task Authorization. The one (1) period is not a limitation upon manufacturer warranties or Utility Contractor's payment and performance Bond(s).

**8.6** Preparation/Sufficiency of Site. The Utility Contractor shall, among other things, and as applicable: (i) visit and thoroughly inspect the Project Sites and any structure(s) or other man-made features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (ii) familiarize itself with any provided survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components, and other attributes having or likely to have an impact on the Project; (iii) familiarize itself with the City's layout and design requirements, conceptual design objectives, and budget for the Projects; (iv) familiarize itself with pertinent Project dates, including the Project Schedule; (v) review and analyze all Project geotechnical, hazardous substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations, and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involve modifications to any existing structure(s) or other man-made feature(s) on the Project Site, the Utility Contractor shall also review all as-built and record drawings, plans, and specifications of which the Utility Contractor has been informed by the City, and shall thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by the Utility Contractor resulting from its failure to familiarize itself with the Project Sites or pertinent documents shall be deemed waived.

**8.7** Safety. Utility Contractor shall be solely and absolutely responsible and assume all liability for the safety and supervision of its principals, employees, resident project representatives (and assistants) while performing Services provided hereunder.

## 9.0 REASONABLE ACCESS

**9.1** During the term of this Agreement, City shall grant Utility Contractor reasonable access to the City's premises, records, and files for purposes of fulfilling its obligations under this Agreement.

## 10.0 INSURANCE

**10.1 Liability Amounts.** During the term of this Agreement, Utility Contractor shall be responsible for providing the types of insurance and limits of liability as set forth below.

A. Professional Liability: If professional services are rendered under any Task Authorization, proof of professional liability insurance shall be provided to the City for the minimum amount of $1,000,000 as the combined single limit for each occurrence.

B. The Utility Contractor shall maintain comprehensive general liability insurance in the minimum amount of $2,000,000 as the combined single limit for each occurrence to protect the Utility Contractor from claims of property damages which may arise from any Services performed under this Agreement whether such Services are performed by the Utility Contractor or by anyone directly employed by or contracting with the Utility Contractor.

C. The Utility Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of $1,000,000 combined single limit bodily injury and minimum $50,000 property damage as the combined single limit for each occurrence to protect the Utility Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Utility Contractor or by anyone directly or indirectly employed by the Utility Contractor.

D. Utility Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing Work for the City pursuant to this Agreement.

**10.2 Special Requirements.** Current, valid insurance policies meeting the requirements herein identified shall be maintained during the term of this Agreement. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date. There shall also be a 30-day advance written notification to the City in the event of cancellation or modification of any stipulated insurance coverage. **With the exception of any required professional insurance policy hereunder, the City shall be an additional named insured on all stipulated insurance policies as its interest may appear, from time to time.**

**10.3 Independent Associates and Consultants.** All independent associates and consultants employed by Utility Contractor to perform any Services hereunder shall fully comply with the insurance provisions contained in this paragraph.

## 11.0 COMPLIANCE WITH LAWS AND REGULATIONS

**11.1** Utility Contractor shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of Services under this Agreement.

## 12.0 REPRESENTATIONS

**12.1** Utility Contractor represents that the Services provided hereunder shall conform to all requirements of this Agreement and any Task Authorization, shall be consistent with recognized and sound construction practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the Services rendered.

**12.2** Utility Contractor represents that all principals, employees, and other personnel furnishing such Services shall be qualified and competent to perform the Services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best professional knowledge and judgment.

## 13.0 GUARANTEE AGAINST INFRINGEMENT

**13.1** Utility Contractor guarantees that all Services performed under this Agreement shall be free from claims of patent, copyright, and trademarks infringement. Notwithstanding

any other provision of this Agreement, Utility Contractor shall indemnify, hold harmless, and defend City, its officers, directors, attorneys, employees, agents assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, Services, or other item provided under this Agreement. Notwithstanding the foregoing, Utility Contractor may elect to provide non-infringing services.

## 14.0 DOCUMENTS

**14.1 Public Records.** Pursuant to Section 119.0701, Florida Statutes and other applicable public records laws, Utility Contractor agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics or means of transmission, of Utility Contractor related, directly or indirectly, to the services provided to the City under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record, whether in the possession or control of City or the Utility Contractor. Said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics or means of transmission of Utility Contractor are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the City's designated custodian of public records.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS/CITY CLERK AT (321) 433-8484, 65 STONE STREET, COCOA, FLORIDA 32922.**

Utility Contractor is required to and agrees to comply with public records laws. Utility Contractor shall keep and maintain all public records required by City to perform the services as agreed to herein. Utility Contractor shall provide the City, upon request from the CITY CLERK, copies of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. Utility Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term. Upon completion of the Agreement, Utility Contractor shall transfer to City, at no cost, all public records in possession of the Utility Contractor, provided the transfer is requested in writing by the City Clerk. Upon such transfer, Utility Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. However, if the City Clerk does not request that the public records be transferred, the Utility Contractor shall continue to keep and maintain the public records upon completion of the Agreement and shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from the City Clerk, in a format that is compatible with the information technology systems of City. Should the City not possess public records relating to this Agreement which are requested to be inspected or copied

by the City or any other person, the City shall immediately notify Utility Contractor of the request and the Utility Contractor shall then provide such records to the City or allow the records to be inspected or copied within a reasonable time. If the Utility Contractor does not comply with a public records request, the City may enforce this Section to the extent permitted by law. Utility Contractor acknowledges that if the Utility Contractor does not provide the public records to the City within a reasonable time, the Utility Contractor may be subject to penalties under Section 119.10, Florida Statutes. The Utility Contractor acknowledges that if a civil action is filed against the Utility Contractor to compel production of public records relating to this Agreement, the court may assess and award against Utility Contractor the reasonable costs of enforcement, including reasonable attorney fees. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Utility Contractor, be open and freely exhibited to the City for the purpose of examination, audit or otherwise. Failure by Utility Contractor to grant such public access and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the City upon delivery of a written notice of cancellation. If the Utility Contractor fails to comply with this Section, and the City must enforce this Section, or the City suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Utility Contractor failure to comply with this Section, the City shall collect from Utility Contractor prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Utility Contractor. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Utility Contractor failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

**14.2 Reuse of Documents.** All documents, including but not limited to, drawings, specifications, and data, or programs stored electronically or otherwise, prepared by the Utility Contractor and its independent contractors and associates pursuant to this Agreement or related exclusively to the Services described herein may be reused by the City for any reason or purpose at anytime. However, the City agrees that the aforesaid documents are not intended or represented to be suitable for reuse by the City or others on any undertaking other than the Work outlined in this Agreement. Any reuse for an undertaking other than for the Work without verification or adoption by the Utility Contractor, or its independent contractors and associates if necessary, to specific purposes intended will be at the City's sole risk and without liability or legal exposure to the Utility Contractor.

**14.3** The Utility Contractor acknowledges that the City is a Florida Municipal Corporation and subject to the Florida Public Records Law. Utility Contractor agrees that to the extent any document produced by Utility Contractor under this Agreement constitutes a Public Record, Utility Contractor shall comply with the Florida Public Records Law.

## 15.0 ASSIGNMENT

**15.1** Utility Contractor shall not assign or subcontract this Agreement, any Task Authorization hereunder, or any rights or any monies due or to become due hereunder without the prior, written consent of City.

**15.2** If upon receiving written approval from City, any part of this Agreement is subcontracted by Utility Contractor, Utility Contractor shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

**15.3** If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Utility Contractor who shall take immediate steps to remedy the situation.

**15.4** If any part of this Agreement is subcontracted by Utility Contractor, prior to the commencement of any Work by the subcontractor, Utility Contractor shall require the subcontractor to provide City and its affiliates with insurance coverage as set forth by the City.

## 16.0 INDEPENDENT CONTRACTOR

**16.1** At all times during the term of this Agreement, Utility Contractor shall be considered an independent contractor and not an employee of the City.

## 17.0 TERMINATION; DEFAULT BY UTILITY CONTRACTOR AND CITY'S REMEDIES

**17.1** The City reserves the right to revoke and terminate this Agreement and rescind all rights and privileges associated with this Agreement, without penalty, at any time with or without cause. Without limitation, the following shall be considered cause for terminating this Agreement and shall constitute a default hereunder:

**17.2** Utility Contractor defaults in the performance of any material covenant or condition of this Agreement and does not cure such other default within thirty (30) calendar days after written notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the Utility Contractor shall have such time as is reasonably necessary to remedy the default, provided the Utility Contractor promptly takes and diligently pursues such actions as are necessary.

**17.3** Utility Contractor is adjudicated bankrupt or makes any assignment for the benefit of creditors or Utility Contractor becomes insolvent, or is unable or unwilling to pay its debts; or

**17.4** Utility Contractor has acted negligently, as defined by general and applicable law, in performing the Work hereunder; or

**17.5** Utility Contractor has committed any act of fraud upon the City; or

**17.6** Utility Contractor has made a material misrepresentation of fact to the City while performing its obligations under this Agreement.

**17.7** Utility Contractor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement without prejudice to any other right or remedy City may have under this Agreement.

**17.8** Utility Contractor fails to comply with any condition or provision of this Agreement including any Task Authorization.

**17.9** Notwithstanding the aforementioned, in the event of a default by Utility Contractor, the City shall have the right to exercise any other remedy the City may have by operation of law, without limitation, and without any further demand or notice. In the event of such termination, City shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for Work properly performed prior to the effective date of termination. Additionally, in the event of such termination upon default and breach of this Agreement, the City may take possession of the Project Site and of all materials, tools, and appliances thereon and finish the work by whatever method the City may deem expedient. Any completed services performed by Utility Contractor under this Agreement shall, at the option of the City, become the City's property and Utility Contractor shall be entitled to receive equitable compensation for any Work completed to the satisfaction of the City. The Utility Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement, and the City may withhold any payments to Utility Contractor for the purpose of setoff until such time as the amount of damages due to the City from Utility Contractor can be determined.

## 18.0 FORCE MAJEURE

**18.1** Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; plague; pandemic; flood; windstorm; explosion; riot; ware; sabotage; strikes; extraordinary breakdown of or damage to City's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this Agreement.

## 19.0 GOVERNING LAW & VENUE

**19.1** This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any state action or litigation shall be Brevard County, Florida. Venue for any federal action or litigation shall be Orlando, Florida.

**19.2** The parties agree that should any dispute arise between them regarding the terms or performance of this Agreement, both parties will participate in mediation. The parties agree to equally share the cost of the mediator. Should the parties fail to resolve their differences through mediation, then any cause of action filed hereunder shall be filed in the Circuit or County Court for Brevard County, Florida.

## 20.0 HEADINGS

**20.1** Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

## 21.0 SEVERABILITY

**21.1** In the event any portion or part of thereof this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise by fully enforceable.

## 22.0 WAIVER AND ELECTION OF REMEDIES

**22.1** Waiver by either party of any term, condition or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future.

**22.2** No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

## 23.0 THIRD PARTY RIGHTS

**23.1** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Utility Contractor.

## 24.0 PROHIBITION AGAINST CONTINGENT FEES

**24.1** Utility Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Utility Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Utility Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

## 25.0 ENTIRE AGREEMENT

**25.1**This Agreement, including any Task Authorizations and Schedules, Attachments, Appendix's and Exhibits attached hereto, constitute the entire agreement between City and Utility Contractor with respect to the Services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. The terms and conditions of this Agreement shall be deemed automatically incorporated into any Task Authorization approved and executed hereunder regardless if the Task Authorization references this Agreement.

## 26.0 NO JOINT VENTURE

**26.1** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties; and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

## 27.0 ATTORNEY'S FEES

**27.1** Should either party bring an action to enforce any of the terms of this Agreement, each party shall bear its own costs and expenses of such action including, but not limited to, reasonable attorney's fees, whether at settlement, trial or on appeal.

## 28.0 COUNTERPARTS

**28.1** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

## 29.0 AGREEMENT INTERPRETATION; DRAFTING

**29.1** At its discretion, during the course of the work, should any errors, ambiguities or discrepancies be found in the Agreement or specifications, the City at its sole discretion will interpret the intent of the Agreement and work descriptions and the Utility Contractor hereby agrees to abide by the City's interpretation and agrees to carry out the work in accordance with the decision of the City. When the material, article or equipment is designated by a brand name and more than one brand name is listed, it will be understood that the work is based on one brand name only. The Utility Contractor will be responsible for all coordination necessary to accommodate the material, article or equipment being provided without additional cost to the City. A substitute material, article or equipment is allowed if it is reasonably equivalent to the brand name specified. The City has full discretion to decide whether a substitute is reasonably equivalent. Utility Contractor must notify the City prior to use of the substitute for a specified brand name and allow the City to make a determination before Utility Contractor uses the substitute.

**29.2** City and Utility Contractor each represent that they have both shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties in a court of competent jurisdiction, except as provided in Section 29.1.

## 30.0 NON-DISCRIMINATION

**30.1** Utility Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

## 31.0 PUBLIC ENTITY CRIMES

**31.1** As provided in §287.132 and §287.133, *Florida Statutes*, by entering into this Contract or performing any work in furtherance hereof, the Utility Contractor certifies that it, its affiliates, suppliers, subcontractors and Contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by §287.133(3)(1), *Florida Statutes*.

## 32.0 CODE REQUIREMENTS

**32.1** The Utility Contractor and its subcontractors on any project must be familiar with all applicable Federal, State, County, City and Local Laws, Regulations or Codes and be governed accordingly as they will apply to the project and the actions or operations of those engaged in the work or concerning materials used. Utility Contractor shall ask for and receive any required inspections.

## 33.0 TESTING

**33.1** The Utility Contractor shall be responsible for all tests and testing required by this Contract, unless otherwise specified. All testing shall be done in the presence of a representative of the City. The City reserves the right to test all materials, products, installations and equipment.

**33.2** All pipelines will be placed in satisfactory operating condition by the Utility Contractor prior to final payment, and the Utility Contractor shall furnish a letter addressed to the City advising that the completed Work has been installed in accordance with the plans and specifications of this Contract and that all items are in proper operating condition.

## 34.0 CITY'S RIGHT TO STOP WORK

**34.1** If the Utility Contractor persistently fails or refuses to perform the Work in accordance with the contract documents, the City shall have the right, but not an obligation, to order the Utility Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that the Work be resumed. In such event, the Utility Contractor shall immediately obey such order. A stop work directive provided under this paragraph shall not entitle the Utility Contractor to an extension of the completion date.

## 35.0 CITY'S RIGHT TO PERFORM WORK

**35.1** If the Utility Contractor's Work is stopped by City, or if the Utility Contractor persistently fails or refuses to perform the Work in accordance with the contract documents, and the Utility Contractor fails within three (3) working days of such stoppage, failure, or refusal, to provide adequate assurance to the City that the cause of such stoppage, failure, or refusal will be

eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against Utility Contractor, proceed to carry out the subject Work. In such a situation, an appropriate change order shall be issued deducting from the contract price the cost of correcting the subject deficiencies, plus compensation for the City's Consultant's additional services and expenses necessitated thereby, if any. If the unpaid portion of the contract price is insufficient to cover the amount due the City, the Utility Contractor shall pay the difference to the City.

## 36.0 EMERGENCIES

**36.1** All emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Utility Contractor, without special instruction or authorization from the City or the City's authorized representative, is obligated to immediately act to prevent threatened damage, injury, or loss. The Utility Contractor shall give the City's authorized representative(s) written documentation within three (3) days from the inception of said emergency if the Utility Contractor believes that any significant changes in the Work or variations from the contract documents have been caused thereby. If the City's authorized representative determines that a change in the contract documents is required because of action taken by the Utility Contractor in response to such an emergency, a change order will be issued to document the consequences of such action.

## 37.0 WARRANTY / GUARANTEE

Unless otherwise required by the specifications, the Utility Contractor shall furnish a one (1) year warranty on all equipment, furnishings, and installation provided hereunder against defect in material and/or workmanship. The warranty shall become effective on the Date of Substantial Completion and acceptance by the City or as otherwise required by law. Should any defect in materials or workmanship, excepting ordinary wear and tear, be discovered during the above-stated warranty period, the Utility Contractor, upon written notice from the City, shall immediately repair or replace same at no cost to the City. The Utility Contractor will not be liable under the above warranty for any defects or damages resulting from unforeseeable causes beyond the control, and without fault or negligence, of the Utility Contractor, such as misuse or neglect by the City, acts of God, fires, floods and hurricanes.

## 38.0 WAIVER OF JURY TRIAL

**38.1** The City and Utility Contractor hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the construction of the work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

## 39.0 BARRICADES

**39.1** The Utility Contractor shall provide all barricades and/or protective safety devices and shall take all necessary precautions to protect all personnel and property. The

Utility Contractor shall remove said barricades and/or safety devices from City property at the completion of the project.

## 40.0 COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT

**40.1** By the submission of its Bid, Bidder certifies that all material, equipment, etc. contained in its bid meets all Occupational Safety and Health Act (OSHA) requirements. Bidder further certifies that if it is the successful Bidder, and any of the material, equipment, etc. delivered is subsequently found to be deficient of any OSHA requirement in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the Bidder. Furthermore, in compliance with Florida law, any item delivered from a Task assigned under this Agreement must be accompanied by a Material Safety Data Sheet (MSDS). The MSDS must include the following information:

A. The chemical name and common name of the toxic substance

B. The hazards or other risks in the use of the toxic substances including:

1. The potential for fire, explosion, corrosion and reactivity
2. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance
3. The primary routes of entry and symptoms of over-exposure

C. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of over-exposure

D. The emergency procedure for spills, fire, disposal and first aid

E. A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information

F. The year and month, if available, that the information was compiled and the name, address and emergency telephone number of the manufacturer responsible for preparing the information

## 41.0 STORAGE, REMOVAL AND DISPOSAL OF SOLID WASTE/CONSTRUCTION DEBRIS

**41.1** The Utility Contractor must comply with all applicable City Codes and solid waste franchise agreements regarding the storage, removal, and disposal of solid waste and construction debris. Prior to performing any Services required hereunder, the Utility Contractor shall contact the City's Utilities Department for information relative to complying with this section.

## 42.0 MATERIALS, INSTALLATION AND PERFORMANCE

**42.1** The Utility Contractor shall be responsible for the provision, installation and performance of all equipment, materials, services, etc. offered in their Bid. The Utility Contractor is in no way relieved of the responsibility for the performance of all equipment furnished or of assuring the timely delivery of materials, equipment, etc. even though it is not of their own manufacture. Unless otherwise specified, material storage shall be on site and within the defined area of the Work and within the Utility Contractor's area of responsibility.

## 43.0 SET UP AND CONNECTIONS

**43.1** All equipment is to be set up, connected to utilities, checked and demonstrated at no charge to the City. The Utility Contractor shall be responsible for all transportation, off-loading, handling, storage and installation of any City-furnished Utility Contractor-installed material and equipment.

## 44.0 SAFETY AND PROTECTION OF PROPERTY

**44.1** The Utility Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, its employees on the Work and all other persons who may be affected thereby; the Work and materials and equipment to be incorporated therein; and all other property at the site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Utility Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, and shall give all notices required by same. This requirement includes, but is not limited to, the United Sates Occupational Safety and Health Act and the Florida Trench Safety Act, *Florida Statute* §553.60.

## 45.0 TAXES

**45.1** The Utility Contractor shall pay all applicable sales, consumer-use, and other similar taxes required by law. The Utility Contractor is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.

## 46.1 ENTIRETY OF CONTRACT

**46.1** The City and the Utility Contractor agree that this Contract sets forth the entire Contract between the parties and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 3.0 – Changes in the Scope of Work.

## 47.0 NOTICE

For Utility Contractor
Danus Utilities, Inc.

2320 Beardall Avenue
Sanford, Florida 32771
Attention: DAN Pardus
Phone: 386-233-5588

For City:

City of Cocoa/ Utilities Department
Attention: Utilities Director
351 Shearer Blvd.
Cocoa, Florida 32922
(321) 433-8710

**47.1** Either party may change the notice address by providing the other party written notice of the change.

## 48.0 SOVEREIGN IMMUNITY

**48.1** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars ($200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars ($300,000.00). This paragraph shall survive termination of this Agreement.

## 49.0 CORPORATE REPRESENTATIONS BY UTILITY CONTRACTOR

**49.1** Utility Contractor hereby represents and warrants to the City the following:

A. Utility Contractor is duly registered and licensed to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in this Agreement.

B. The undersigned representative of Utility Contractor has the power, authority, and legal right to execute and deliver this Agreement on behalf of Utility Contractor.

## 50.0 INDEMNIFICATION.

**50.1** For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Utility Contractor shall indemnify, hold harmless and defend the City, its officers, agents, officials, representatives, employees, and/or

attorneys against any and all liability, loss, cost, damages, expenses, claim or actions, of whatever type, including but not limited to attorney's fees and suit costs, for trial and appeal, which the City may hereafter sustain, incur or be required to pay, arising out of, wholly or in part, or due to any act or omission of Utility Contractor, its agent(s), vendors, contractors, subcontractor(s), representatives, servants or employees in the execution, performance or non-performance or failure to adequately perform Utility Contractor's obligations pursuant to this Agreement and any and all Task Authorizations hereunder.

**50.2** The indemnification provided above shall obligate the indemnifying party to defend at its own expense or to provide for such defense, at the sole option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City, its officers, agents, officials, representatives, employees, and/or attorneys which may result from the services under this Agreement whether the services be performed by the indemnifying party or anyone directly or indirectly employed or hired by them. In all events the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be subject to and included with this indemnification provided herein, as long as said fees are reasonable. This paragraph shall survive termination of this Agreement.

The Utility Contractor specifically assumes potential liability for actions brought by Utility Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, Utility Contractor specifically waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. This waiver has been specifically and mutually negotiated by the parties.

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF THE CONTRACTOR MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ECONOMIC DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT IF THE CONDITIONS OF SECTION 558.0035 ARE SATISFIED.

**IN WITNESS WHEREOF**, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**CITY:**

**CITY OF COCOA, FLORIDA:**

By: _____
**Stockton Whitten, City Manager**

**ATTEST:**

**Carie Shealy, City Clerk**

City of Cocoa CORPORATE SEAL FLORIDA

**UTILITY CONTRACTOR:**

**DANUS UTILITIES, INC.:**

By: _____
Print Name/Title: DAN J PARDUS
PRESIDENT

**EXHIBIT "A"**

**SCOPE OF SERVICES**
**UTILITY GENERAL CONSTRUCTION CONTRACTOR**
**AGREEMENT**

The Scope of Services to be provided by the Utility Contractor shall include all phases of underground utility services. The Utility Contractor has already been pre-qualified by City to perform the following:

- Install new water, sewer, and/or reclaim pressure pipe, gravity main, manholes, valves, fire hydrants, service lines, air release valves, and other associated infrastructure and appurtenances.
- Repair and/or replace water, sewer, and/or reclaim pressure pipe, gravity main, manholes, valves, fire hydrants, service lines, air release valves, and other associated infrastructure and appurtenances.
- Repair and/or replace or installation of new piping and associated appurtenances located at the water and wastewater plants and the wellfield
- Perform line stops / install insert valves on various size pipe to include large diameter transmission mains
- The projects will consist of various size pipe consisting of various materials: i.e.: metal, plastic, Asbestos Cement Pipe, and reinforced concrete.
- All work on the City of Cocoa Utility system shall meet the requirements of the City of Cocoa Utilities Technical Provisions and Standard Details
- The Contractor shall include a Critical Path Method Schedule for each project. The requirements will be detailed in the specifications for each project.
- Work shall include any associated restoration, maintenance of traffic, erosion control, clearing and grubbing, or other similar ancillary work to complete the project
- Restoration of FDOT, Brevard County, City of Cocoa, or other local jurisdiction roads (to included driveways, curbing, and sidewalk), storm water systems, and/or other utilities affected by the utility work. The restoration shall be per the governing authority's specifications and requirements
- Contractor shall meet all safety requirements as required by all governing State law, municipal ordinances, OSHA Standards, and as may be necessary to protect life, property, or the work.

Quotes will first be obtained from Utility Contractor prior to commencement of any planned project. The City shall retain the right to refuse any quote for just cause.

For each project Utility Contractor will supply the following:

A. Labor, equipment and material (unless material is supplied by City by mutual agreement)

B. Traffic control: On-site personnel must be certified in FDOT Maintenance of Traffic Level III Work Zone Training.

C. Supervision: On-site personnel in charge must be OSHA Certified Competent Person

D. De-watering

E. As-built drawings: When project is completed

# EXHIBIT "B"

## FORM

## PUBLIC CONSTRUCTION BOND

In compliance with Section 255.05, Florida Statutes

| | |
|---|---|
| **BOND NO.:** | |
| **Contractor Name:** | |
| **Contractor Address:** | |
| **Contractor Phone No.:** | |
| **Surety Company:** | |
| **Surety Agent:** | |
| **Owner Name:** | City of Cocoa |
| **Owner Address:** | 65 Stone Street |
| | Cocoa, Florida 32922 |
| **Owner Phone No.** | (321) 433-8710 |
| **Owner Fax No.** | |
| **Owner Email:** | |
| **Contract Date:** | |
| **Contract Amount:** | $ |
| **Bond Amount:** | $ |
| **Contract No. (if applicable):** | |
| **Description of Work:** | |
| **Project Address:** | |
| **Legal Description:** | |

| | |
|---|---|
| **Bid Number:** | |

**BY THIS BOND,** We,_____., a _____as Principal, and _____ a _____ Corporation as Surety, are hereby bound to the **CITY OF COCOA**, a Florida municipal corporation , herein called Owner, in the sum of $_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

**THE CONDITION OF THIS BOND** is that if Principal:

a. Performs the _____Agreement dated _____, 20____, ("Agreement") between Principal and Owner for construction of the _____as specified in the Agreement, the Agreement being made a part of this bond by reference, at the times and in the manner prescribed in this Agreement; and

b. Promptly makes payments to all claimants, as defined in section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement; and

c. Pays Owner all losses, damages, including delay damages, expenses, and costs that Owner sustains because of a default by Principal under the Agreement; and

d. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement and by law including all warranties and guarantees specified in the Agreement, then this bond is to be void; otherwise it remains in full force and effect.

e. In any action against this performance bond, the Owner is entitled to attorney's fees under sections 627.428 and 627.756, Florida Statutes, and Danis Industries Corp. v. Ground Improvement Techniques, 645 So.2d 420 (Fla. 1994) and McCarthy Bros. Co. v. Tilbury Construction, Inc., 849 So.2d 7 (Fla. 1st DCA 2003), including appellate attorney's fees.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

**IN WITNESS WHEREOF,** the said Principal and Surety have assigned and sealed this instrument this _____ day of _____ 2020.

**CONTRACTOR AS PRINCIPAL**

_____., a _____:

_____

(Corporate Seal)

Signature_____

Title_____

**SURETY**

Company:

_____

(Corporate Seal)

Signature_____

Title_____

Approved as to Form:

_____

Cocoa City Attorney

Finance Department
Purchasing Division
65 Stone Street I Cocoa, FL 32922
Phone: (321) 433-8844 I Email: dkozlak@cocoafl.gov

CITY OF COCOA
AMENDMENT TO AGREEMENT FOR UTILITIES
GENERAL CONSTRUCTION CONTRACTOR SERVICES
**1st AMENDMENT**
**ATLANTIC DEVELOPMENT OF COCOA, INC.**
**RFP NO. 20-18-COC**

This 1ST Amendment to the "AGREEMENT FOR UTILITIES GENERAL CONSTRUCTION CONTRACTOR SERVICES" is made between the City of Cocoa and Atlantic Development of Cocoa, Inc. located at 2185 West King Street, Cocoa, Florida 32926.

The agreement entered into on November 9, 2020, is hereby amended to renew for the first renewal option available for one (1) two-year renewal, commencing on November 9, 2023, and terminating on November 8, 2025.

All other terms, conditions, provisions, and scope of services remain unchanged. By signing below, each party indicates its approval of this Amendment for Contract.

| **ATLANTIC DEVELOPMENT OF COCOA, INC.** | **CITY OF COCOA** |
|---|---|
| **By:** Glenn S. Grignon<br>(Name) Printed | **By:** Stockton Whitten<br>(Name) Printed |
| Vice President<br>(Title) | City Manager<br>(Title) |
| Signature 05/05/2023 Date | Signature Date |

**ATTESTED BY:**

Signature/Title

CC: Carie Shealy, City Clerk
John A. Walsh, P.E. Utilities Director
Diane Kozlak, Senior Buyer & Contract Agent

Finance Department
Purchasing Division
65 Stone Street I Cocoa, FL 32922
Phone: (321) 433-8844 I Email: dkozlak@cocoafl.gov

CITY OF COCOA
AMENDMENT TO AGREEMENT FOR UTILITIES
GENERAL CONSTRUCTION CONTRACTOR SERVICES
**1st AMENDMENT**
**DANUS UTILITIES, INC.**
**RFQ NO. 20-18-COC**

This 1ST Amendment to the "AGREEMENT FOR UTILITIES GENERAL CONSTRUCTION CONTRACTOR SERVICES" is made between the City of Cocoa and Danus Utilities, Inc. located at 2320 Beardall Avenue, Sanford, Florida 32771.

The agreement entered into on November 10, 2020, is hereby amended to renew for the first renewal option available for one (1) two-year renewal, commencing on November 10, 2023, and terminating on November 9, 2025.

All other terms, conditions, provisions, and scope of services remain unchanged. By signing below, each party indicates its approval of this Amendment for Contract.

**DANUS UTILITIES, INC.**

By: Daniel J Pardus
(Name) Printed

President
(Title)

Signature 4/27/2023
Date

**CITY OF COCOA**

By: Stockton Whitten
(Name) Printed

City Manager
(Title)

Signature Date

**ATTESTED BY:**

Signature/Title

CC: Carie Shealy, City Clerk
John A. Walsh, P.E. Utilities Director
Diane Kozlak, Senior Buyer & Contract Agent

# RFQ Q-20-18-COC Combined Scores - 9/11/20

| Rating Scale | | Respondent Name | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| *More than adequate:* 8 - 10<br>*Adequate:* 5 - 7<br>*Less than adequate:* 1 - 4<br>*Not covered:* 0 | Weight | Atlantic | | | | Cathcart | | | | CDM Trucking | | | | Danus | | | | Hinterland | | | | Prime (Disqualified due to not submitting section 1.9) | | | | Southern | | | |
| Rating Factor | | Jack | Katie | Chris | Weighted Score | Jack | Katie | Chris | Weighted Score | Jack | Katie | Chris | Weighted Score | Jack | Katie | Chris | Weighted Score | Jack | Katie | Chris | Weighted Score | Jack | Katie | Chris | Weighted Score | Jack | Katie | Chris | Weighted Score |
| Company Qualifications | 0.10 | 10 | 9 | 10 | 2.90 | 7 | 7 | 9 | 2.30 | 6 | 5 | 7 | 1.80 | 9 | 8 | 10 | 2.70 | 8 | 8 | 9 | 2.50 | ~~9~~ | ~~9~~ | ~~9~~ | ~~2.70~~ | 8 | 9 | 8 | 2.50 |
| Project Team Qualifications | 0.30 | 9 | 9 | 10 | 8.40 | 9 | 7 | 9 | 7.50 | 7 | 5 | 7 | 5.70 | 9 | 9 | 10 | 8.40 | 9 | 8 | 9 | 7.80 | ~~9~~ | ~~8~~ | ~~9~~ | ~~7.80~~ | 9 | 8 | 9 | 7.80 |
| Project Approach | 0.20 | 7 | 7 | 10 | 4.80 | 9 | 7 | 8 | 4.80 | 7 | 5 | 5 | 3.40 | 8 | 8 | 10 | 3.60 | 9 | 8 | 9 | 5.20 | ~~10~~ | ~~9~~ | ~~9~~ | ~~5.60~~ | 7 | 8 | 9 | 4.80 |
| Project References | 0.30 | 10 | 9 | 10 | 8.70 | 7 | 7 | 6 | 6.00 | 6 | 5 | 7 | 5.40 | 8 | 8 | 10 | 7.80 | 7 | 8 | 8 | 6.90 | ~~10~~ | ~~9~~ | ~~7~~ | ~~7.80~~ | 8 | 9 | 9 | 7.80 |
| Client References | 0.10 | 10 | 10 | 10 | 3.00 | 10 | 10 | 10 | 3.00 | 10 | 10 | 10 | 3.00 | 10 | 10 | 10 | 3.00 | 10 | 10 | 10 | 3.00 | ~~10~~ | ~~9~~ | ~~10~~ | ~~2.90~~ | 10 | 10 | 10 | 3.00 |
| | 1.00 | | | | 27.80 | | | | 23.60 | | | | 19.30 | | | | 25.50 | | | | 25.40 | | | | 26.80 | | | | 25.90 |

COMPILED BY:

Chris M. Collier

9/11/20

## Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-281 | **Version:** 1 | **Name:** | | |
| **Type:** | Contract | | **Status:** | Multi-Year Contract | |
| **File created:** | 4/25/2023 | | **In control:** | City Council | |
| **On agenda:** | 6/6/2023 | | **Final action:** | | |
| **Title:** | Approve Participation in a Multi-Year Piggyback Agreement with Crom, LLC for Concrete Tank Repairs Utilizing the City of West Palm Beach Master Water Storage Tank Cleaning and Repair Services Agreement Amendment No. 1, Effective June 4, 2019 through June 3, 2024; To Authorize the City Manager to Execute the Piggyback Agreement and any Amendments and Renewals Under the Existing Contract; To Authorize the City Manager to Approve a Purchase Order to Crom, LLC in the Amount of $161,163.90. (Utilities Director) | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | Crom Proposal 5-9-23.pdf<br>Crom COI Exp 12-31-23.PDF<br>Standard Form for Piggyback Contract No. ITB 18-19-115 SIGNED JP.pdf<br>E-Verify CROM Affidavit Signed JP.pdf<br>M002-R-WPB_West Palm Beach_CCR_Fully Executed.pdf<br>M002RWPB Renewal Term Extensions FE 2.25.22.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 17, 2023
Agenda Date: June 6, 2023
Prepared By: John Perrin, P.E., Senior Engineer
Through: John A. Walsh, P.E., Utilities Director
Requested Action:
To Approve Participation in a Multi-Year Piggyback Agreement with Crom, LLC for Concrete Tank Repairs Utilizing the City of West Palm Beach Master Water Storage Tank Cleaning and Repair Services Agreement Amendment No. 1, Effective June 4, 2019 through June 3, 2024; To Authorize the City Manager to Execute the Piggyback Agreement and any Amendments and Renewals Under the Existing Contract; To Authorize the City Manager to Approve a Purchase Order to Crom, LLC in the Amount of $161,163.90.

## BACKGROUND:

The City of Cocoa's Dyal Water Treatment Plant (Dyal) is comprised of several concrete tanks which are used for a multitude of purposes during the water treatment process. Repair and maintenance of the tanks is periodically required. The clarifiers located at Dyal are 1,275,000-gallon concrete tanks each used for lime softening.

Project No. WS23RC was approved as part of the FY23 budget to perform repairs and fully recoat the clarifier tanks with cementitious and epoxy linings in order to preserve their useful life. Prior to performing the full recoating operation, the tanks require investigative work to determine the areas of corroded rebar and spalled concrete as well as repair and local recoating of those damaged areas.

The City of West Palm Beach entered into a competitively-sourced continuing services contract with Crom, LLC (Crom) on June 4, 2019 to perform concrete repair work on their water treatment concrete infrastructure.

Staff is requesting approval of a piggyback contract with Crom utilizing the City of West Palm Beach Master Water Storage Tank Cleaning and Repair Services Agreement Amendment No. 1, Effective June 4, 2019 through June 3, 2024, and approval of a purchase order with Crom in the amount of $161,163.90 to perform the required investigative and repair work on the clarifiers at Dyal.

Approval for the full recoating of the tanks will be requested after this portion of the work is completed.

Staff recommends approval of this agenda item in order to effectively and efficiently complete the required repair work.

## STRATEGIC PLAN CONNECTION:

N/A

## BUDGETARY IMPACT:

| | |
|---|---|
| Budgeted | Yes |
| If not budgeted, is amendment/transfer attached? | N/A |
| Amount Requested | $161,163.90 |
| Account Number | 424-4020-536.63-00 (WS23RC) |
| Account Name | Infrastructure |
| Source of Funds: | Capital |

## PREVIOUS ACTION:

None

## RECOMMENDED MOTION:

To Approve Participation in a Multi-Year Piggyback Agreement with Crom, LLC for Concrete Tank Repairs Utilizing the City of West Palm Beach Master Water Storage Tank Cleaning and Repair Services Agreement Amendment No. 1, Effective June 4, 2019 through June 3, 2024; To Authorize the City Manager to Execute the Piggyback Agreement and any Amendments and Renewals Under the Existing Contract; To Authorize the City Manager to Approve a Purchase Order to Crom, LLC in the Amount of $161,163.90.

February 15, 2023
**Revised May 9, 2023**

Via Email: jperrin@cocoafl.gov

John Perrin
City of Cocoa
351 Shearer Boulevard
Cocoa, Florida 32922

Subject: WO No. 1 – Concrete Investigations and Repairs (Clarifiers)
Contract No. – Continuing Services Agreement
(West Palm Beach CSA Contract Piggyback)
CCR Job No. M001RCOA

CROM Coatings and Restorations, a Division of CROM, LLC ("CCR"), proposes to perform the following work:

1. SERVICES TO BE FURNISHED BY CCR
CCR proposes to furnish all supervision, labor, material, and equipment required to complete the work. The services to be furnished by CCR are specifically:

The following work is to be performed on the following tanks:

- 1,275,000-Gallon Lime Softening Clarifier #2
100'-0" ID x 21'-9" INT-SWD x 18'-5" EXT-SWD
Cast In Place Tank

- 1,275,000-Gallon Lime Softening Clarifier #1
100'-0" ID x 21'-9" INT-SWD x 18'-5" EXT-SWD
Cast In Place Tank

- 1,275,000-Gallon Lime Softening Clarifier
100'-0" ID x 21'-9" INT-SWD x 18'-5" EXT-SWD
Cast In Place Tank

a. Mobilization of crew, equipment, and materials to site.

b. Concrete Investigation and Repairs (maximum of 100 SF at an average depth of 2"):
   1. Chip away loose and or damaged spalled concrete in areas exhibiting structural defects until firm / non-degraded concrete is reached.
   2. Remove scale and severe rust from exposed reinforcing bars in repair area mentioned above.
   3. Coat exposed metal with Sika Armatec 110 Bonding Epoxy.
   4. Patch the vertical prepared surface of the concrete wall with Sika 123 Plus (cementitious non-sag mortar) bringing the repair flush with adjacent surfaces.
   5. *Apply two coats of Tnemec Series 21 Epoxoline at 7.0-10.0 mils DFT per coat to the prepared interior concrete surfaces of the tank walls matching the existing coatings as closely as possible.
   6. *Apply two coats of Tnemec Series 1026 Enduratone Acrylic at 2-3 MDFT per coat to the prepared exterior concrete surfaces of the tank walls matching the existing coatings as closely as possible.

**Please Note:**
**The tanks will need to be drained, cleaned, and removed from service during the repair procedures.**

***Coatings will be applied to the newly repaired areas after the material is cured per manufacturer's recommendation.**

2. COMMENCEMENT AND COMPLETION
Upon your execution of this work order, CCR will be prepared to start work **15 days** after approval of our submittal information; and will undertake to furnish sufficient labor, materials, and equipment to complete this work within approximately **2 weeks per tank** working time thereafter.

3. QUOTATION
We are prepared to carry out this work in accordance with the foregoing for the time & material prices of:

**Clarifier #2:**

| Description | Quantity of Units | Unit Type | Unit Rate | Subtotal | % Markup | Total |
|---|---|---|---|---|---|---|
| **Mobilization** | 2 | LS | $4,400.00 | $8,800.00 | NA | $8,800.00 |
| **Crew Hours** | 92 | HR | $375.00 | $34,500.00 | NA | $34,500.00 |
| **Project Manager Hours** | 8 | HR | $160.00 | $1,280.00 | NA | $1,280.00 |
| **Materials & Equipment + 15%** | | | | | | |
| Series 21 | 10 | GAL | $73.57 | $735.73 | $110.36 | $846.09 |
| Series 1026 Enduratone | 10 | GAL | $52.64 | $526.44 | $78.97 | $605.41 |
| Sikatop 123 | 45 | BAG | $49.66 | $2,234.70 | $335.21 | $2,569.91 |
| Sika Armatec 110 | 3 | KITS | $240.69 | $722.07 | $108.31 | $830.38 |
| Small Misc. Supplies (15% of Material Costs) | 1 | LS | $632.84 | $632.84 | $94.93 | $727.77 |
| Scaffolding | 2 | WK | $22.50 | $45.00 | $6.75 | $51.75 |
| Pressure Washer | 2 | WK | $240.00 | $480.00 | $72.00 | $552.00 |
| Generator | 2 | WK | $275.00 | $550.00 | $82.50 | $632.50 |
| Gas & Diesel | 50 | GAL | $6.00 | $300.00 | $45.00 | $345.00 |
| Dumpster | 1 | WK | $400.00 | $400.00 | $60.00 | $460.00 |
| Portalet | 2 | WK | $105.00 | $210.00 | $31.50 | $241.50 |
| **SUBTOTAL** | | | | | | $52,442.30 |

**Clarifier #1:**

| Description | Quantity of Units | Unit Type | Unit Rate | Subtotal | % Markup | Total |
|---|---|---|---|---|---|---|
| **Mobilization** | 2 | LS | $4,400.00 | $8,800.00 | NA | $8,800.00 |
| **Crew Hours** | 103 | HR | $375.00 | $38,625.00 | NA | $38,625.00 |
| **Project Manager Hours** | 8 | HR | $160.00 | $1,280.00 | NA | $1,280.00 |
| **Materials & Equipment + 15%** | | | | | | |
| Series 21 | 10 | GAL | $80.93 | $809.31 | $121.40 | $930.70 |
| Series 1026 Enduratone | 10 | GAL | $57.91 | $579.08 | $86.86 | $665.95 |
| Sikatop 123 | 45 | BAG | $58.45 | $2,630.24 | $394.54 | $3,024.78 |
| Sika Armatec 110 | 3 | KITS | $283.29 | $849.88 | $127.48 | $977.36 |
| Small Misc. Supplies (15% of Material Costs) | 1 | LS | $730.28 | $730.28 | $109.54 | $839.82 |
| Scaffolding | 2 | WK | $250.00 | $500.00 | $75.00 | $575.00 |
| Pressure Washer | 2 | WK | $440.00 | $880.00 | $132.00 | $1,012.00 |
| Generator | 2 | WK | $275.00 | $550.00 | $82.50 | $632.50 |
| Gas & Diesel | 50 | GAL | $7.00 | $350.00 | $52.50 | $402.50 |
| Dumpster | 1 | WK | $400.00 | $400.00 | $60.00 | $460.00 |
| Portalet | 2 | WK | $105.00 | $210.00 | $31.50 | $241.50 |
| **SUBTOTAL** | | | | | | $58,467.10 |

**Miscellaneous Clarifier Repairs:**

| Description | Quantity of Units | Unit Type | Unit Rate | Subtotal | % Markup | Total |
|---|---|---|---|---|---|---|
| **Mobilization** | 2 | LS | $4,400.00 | $8,800.00 | NA | $8,800.00 |
| **Crew Hours** | 84 | HR | $375.00 | $31,500.00 | NA | $31,500.00 |
| **Project Manager Hours** | 7 | HR | $160.00 | $1,120.00 | NA | $1,120.00 |
| **Materials & Equipment + 15%** | | | | | | |
| Series 21 | 10 | GAL | $80.93 | $809.31 | $121.40 | $930.70 |
| Series 1026 Enduratone | 10 | GAL | $57.91 | $579.08 | $86.86 | $665.95 |
| Sikatop 123 | 33 | BAG | $58.45 | $1,928.84 | $289.33 | $2,218.17 |
| Sika Armatec 110 | 3 | KITS | $283.29 | $849.88 | $127.48 | $977.36 |
| Small Misc. Supplies (15% of Material Costs) | 1 | LS | $625.07 | $625.07 | $93.76 | $718.83 |
| Scaffolding | 2 | WK | $250.00 | $500.00 | $75.00 | $575.00 |
| Pressure Washer | 2 | WK | $440.00 | $880.00 | $132.00 | $1,012.00 |
| Generator | 2 | WK | $275.00 | $550.00 | $82.50 | $632.50 |
| Gas & Diesel | 50 | GAL | $7.00 | $350.00 | $52.50 | $402.50 |
| Dumpster | 1 | WK | $400.00 | $400.00 | $60.00 | $460.00 |
| Portalet | 2 | WK | $105.00 | $210.00 | $31.50 | $241.50 |
| **SUBTOTAL** | | | | | | $50,254.50 |

**TOTAL: $161,163.90**

4. DIFFERING CONDITIONS
CCR does not assume responsibility for differing, latent or concealed conditions, which differ materially from those indicated in the subcontract/Contract documents or from those ordinarily found to exist and not inherent in the Work, including but not limited to weather or subsurface conditions, and not caused by CCR's fault or negligence.

5. ACCEPTANCE
This work order is offered for your acceptance within **10 days** of the date of this work order. We reserve the right after that period to amend our work order to reflect changes in construction schedules, materials, and other direct costs. The return to this company of a copy of this work order with your acceptance endorsed thereon within the time aforesaid will constitute a contract between us and shall be made a part of the master agreement in place.

Sincerely,

CROM Coatings and Restorations, a Division of CROM, LLC

Chris Wilkerson
Project Manager

Brett Bohannon
Regional Lead

/bfb.ry

ACCEPTED BY CLIENT

_____

PRINT: _____

TITLE: _____

DATE: _____

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/31/2023

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

| | |
|---|---|
| **PRODUCER**<br>Willis Towers Watson Northeast, Inc.<br>c/o 26 Century Blvd<br>P.O. Box 305191<br>Nashville, TN 372305191 USA | CONTACT NAME: Willis Towers Watson Certificate Center<br>PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378<br>E-MAIL ADDRESS: certificates@willis.com |
| **INSURED**<br>CROM, LLC<br>250 SW 36th Terrace<br>Gainesville, FL 32607 | INSURER A : Ironshore Specialty Insurance Company — NAIC # 25445<br>INSURER B : Liberty Mutual Fire Insurance Company — 23035<br>INSURER C : Indian Harbor Insurance Company — 36940<br>INSURER D :<br>INSURER E :<br>INSURER F : |

**COVERAGES** **CERTIFICATE NUMBER:** W28589771 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | | |
|---|---|---|---|---|---|---|---|---|---|
| A | [X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS-MADE [X] OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [X] PRO-JECT [X] LOC<br>[ ] OTHER: | Y | Y | IEPICB5Z9Y003 | 12/31/2022 | 12/31/2023 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG<br> | $<br>$<br>$<br>$<br>$<br>$<br>$ | 1,000,000<br>500,000<br>25,000<br>1,000,000<br>2,000,000<br>2,000,000<br> |
| B | AUTOMOBILE LIABILITY<br>[X] ANY AUTO<br>[X] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS<br>[X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY<br>[X] Hired Auto [X] Physical Damage | Y | Y | AS2-Z91-469956-032 | 12/31/2022 | 12/31/2023 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident)<br>Comp./Coll. Ded. | $<br>$<br>$<br>$<br>$ | 1,000,000<br><br><br><br>2,500.00 |
| A | [ ] UMBRELLA LIAB [X] OCCUR<br>[X] EXCESS LIAB [ ] CLAIMS-MADE<br>[ ] DED [ ] RETENTION $ | Y | Y | IEELCASB5Z99003 | 12/31/2022 | 12/31/2023 | EACH OCCURRENCE<br>AGGREGATE<br> | $<br>$<br>$ | 10,000,000<br>10,000,000<br> |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: No<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | Y | WC6-Z91-469956-022 | 12/31/2022 | 12/31/2023 | [X] PER STATUTE [ ] OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$<br>$<br>$ | <br>1,000,000<br>1,000,000<br>1,000,000 |
| C | Professional Liability | Y | Y | CEO744656006 | 12/31/2022 | 12/31/2023 | Each Claim<br>Aggregate Limit | $<br>$ | 10,000,000<br>10,000,000 |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

M001RCOA

Master Water Storage Tank Cleaning and Repair Services, Contract No. ITB 18-19-115.

Certificate Holder is included as an Additional Insured as respects to General Liability, Auto Liability and Professional Liability and Umbrella/Excess Liability if required by written contract.

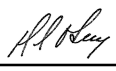
**CERTIFICATE HOLDER**

City of Cocoa
65 Stone Street
Cocoa, FL 32922

**CANCELLATION**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**



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AGENCY CUSTOMER ID: _____

LOC #: _____

# ADDITIONAL REMARKS SCHEDULE



| AGENCY | | NAMED INSURED |
|---|---|---|
| Willis Towers Watson Northeast, Inc. | | CROM, LLC<br>250 SW 36th Terrace<br>Gainesville, FL 32607 |
| POLICY NUMBER<br>See Page 1 | | |
| CARRIER<br>See Page 1 | NAIC CODE<br>See Page 1 | EFFECTIVE DATE: See Page 1 |

## ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

General Liability, Auto Liability and Umbrella/Excess Liability policies shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by Additional Insured if required by written contract.

Waiver of Subrogation applies in favor of Additional Insured with respects to General Liability, Auto Liability, Umbrella/Excess Liability and Workers Compensation if required by written contract and as permitted by law.

INSURER AFFORDING COVERAGE: Ironshore Specialty Insurance Company NAIC#: 25445

POLICY NUMBER: IEPICB5Z9Y003 EFF DATE: 12/31/2022 EXP DATE: 12/31/2023

| TYPE OF INSURANCE: | LIMIT DESCRIPTION: | LIMIT AMOUNT: |
|---|---|---|
| Contractors Pollution | Each Occurrence | $1,000,000 |
| | Aggregate | $2,000,000 |

INSURER AFFORDING COVERAGE: Liberty Mutual Fire Insurance Company NAIC#: 23035

POLICY NUMBER: M22-L9L-473925-022 EFF DATE: 12/31/2022 EXP DATE: 12/31/2023

| TYPE OF INSURANCE: | LIMIT DESCRIPTION: | LIMIT AMOUNT: |
|---|---|---|
| Builders Risk | Occurrence/Project | $10,000,000 |

ADDITIONAL REMARKS:

Builders Risk Special Conditions:

$10,000 PHYSICAL LOSS OF OR DAMAGE TO COVERED PROPERTY, EXCEPT: $50,000 WIND AND HAIL; $250,000 NAMED STORM ZONE 1; $100,000 NAMED STORM ZONE 2; $10,000 NAMED STORM ZONE 3 & 4; $250,000 EARTHQUAKE ZONE 1: $100,000 EARTHQUAKE ZONE 2: $10,000 EARTHQUAKE ZONE 3 & 4: $250,000 FLOOD ZONE 1; $100,000 FLOOD ZONE 2; $10,000 FLOOD ZONE 3 & 4.



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# STANDARD FORM FOR NEW PIGGYBACK CONTRACT

The **City of Cocoa,** a Florida Municipal Corporation ("City") enters this "Piggyback" Contract with Crom, LLC, 250 SW 36th Terrace, Gainesville, FL 32607 (hereinafter referred to as the "Vendor "), under the terms and conditions hereinafter provided. The City and the Vendor agree as follows:

The Financial Operations Manual (FOM) for the City of Cocoa allows for "piggybacking" contracts. Pursuant to this procedure, the City is allowed to piggyback an existing government contract, and there is no need to obtain formal or informal quotations, proposals or bids. The parties agree that the Vendor has entered a contract with City of West Palm Beach - FL, said contract being identified as: Master Water Storage Tank Cleaning and Repair Services, Contract No. ITB 18-19-115. (referred to as the "original government contract").

Work assigned under this contract may include, but is not limited to, the following types of projects: Master Water Storage Tank Cleaning and Repair Services (see Exhibit A – original contract).

1. The original government contract is incorporated herein by reference and is attached as **Exhibit A** to this Contract. All the terms and conditions set out in the original government contract (Exhibit "A") are fully binding on the parties and said terms and conditions are incorporated herein. Additional conditions to the agreement include Section 3.1 - Direct Orders/Purchase Orders is modified to allow individuals POs to be issued for any amount and Section 3.2 - Work Orders is to be stricken from the agreement.

2. Notwithstanding the requirement that the original government contract is fully binding on the parties, the parties have agreed to modify certain technical provisions of the original government contract as applied to this Contract between the Vendor and the City of Cocoa, as follows:

**Time Period ("Term") of the Agreement:**

The effective date of this agreement shall be the latest date mutual parties' sign by and between the City of Cocoa, FL and Crom, LLC. The term of said agreement shall be for the period effective date of the City Mayor signature through 06/03/2024.

The City of Cocoa intends to utilize said agreement for Fiscal Year 2023 and FY2024 and shall not exceed the budgeted amount, any change orders to this amount must be approved by City Council.

**a. Insurance Requirements (As Applicable):**

Liability Insurance

COMMERCIAL GENERAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR CONTRACTS VALUED AT LESS THAN $15,000:

It is required that individuals and firms contracting with the City of Cocoa, where the total contract or job value is LESS than $15,000, maintain Commercial General Liability insurance with a minimum per occurrence limit of not less than $200,000 per person and $300,000 each occurrence, and property damage insurance of at least $200,000 each occurrence and with a deductible amount not greater than $1,000. It is further required that the City of Cocoa, be named as an additional insured to the contractor's CGL policy, and that proof of same in the form of a certificate of insurance be submitted before work is begun.

COMMERCIAL GENERAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR CONTRACTS VALUED AT $15,000 OR MORE:

It is required that individuals and firms contracting with the City of Cocoa, where the total contract or job value is $15,000 or MORE, maintain Commercial General Liability insurance with a minimum per occurrence limit of not less than $2,000,000 as the combined single limit for each occurrence and with a deductible not greater than $5,000 or as otherwise approved in writing by the City Manager. It is further required that the City of Cocoa, be named as an additional insured to the Contractor's CGL policy, and that proof of same in the form of a certificate of insurance be submitted before work is begun.

AUTOMOBILE LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR ALL CONTRACTS:

The Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of $1,000,000 combined single limit bodily injury and minimum $1,000,000 property damage as the combined single limit for each occurrence to protect the Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Contractor or by anyone directly or indirectly employed by the Contractor.

PROFESSIONAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR ALL PROFESSIONALS AS DEFINED BY FLORIDA STATUTE:

Professionals and professional corporations, associations, and firms who contract with the City of Cocoa to provide professional services are required to maintain Professional Liability Insurance in the amount of $3,000,000.00 per occurrence and in the aggregate with a deductible not greater than $50,000.00 and submit proof of same in the form of a certificate of insurance before work is begun.

ENVIRONMENTAL IMPAIRMENT INSURANCE MINIMUM REQUIREMENTS:

Individuals or firms who contract with the City of Cocoa to provide excavation or construction type services and who will be locating portable fuel or lubricant storage tanks at the job site or who will be storing or using hazardous chemicals on the job site are required to maintain Environmental Impairment Insurance of "Pollution Insurance" with a limit of not less than $1,000,000 per occurrence and submit proof of same in the form of a certificate of insurance or an endorsement to their General Liability policy showing a pollution exclusion exception for each specific work product or storage container before work is begun. Contracts with such firms shall include a provision that they work in compliance with the OSHA Hazardous Communication Standard and Florida Department of Environmental Protection guidelines and supply all information about hazardous chemical being brought onto City property as required by the City's Safety and Loss Control Program.

WORKERS' COMPENSATION INSURANCE MINIMUM REQUIREMENTS:

It is required that firms employing four or more people who contract with the City of Cocoa maintain Workers' Compensation Insurance at the statutory limits and employer liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

It is required that firms employing less than four people who contract with the City of Cocoa comply with the exemption and notice provisions of F.S. 440 and maintain employer liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

However, if you are a corporate officer of a corporation that is actively engaged in the construction industry, or a sole proprietor or partner who is actively engaged in the construction industry, then your exemption will not apply to any work performed at a commercial building project valued at $250,000 or greater and you must secure workers’ compensation coverage in accordance with F.S. 440.38 and these general conditions and submit proof of same in the form of a certificate of

insurance before work is begun.

COMPREHENSIVE BUILDER RISK INSURANCE

The Contractor shall maintain comprehensive builder risk insurance, which shall cover Contractor's labor, and any materials and equipment to be used for completion of the Work performed under this Agreement, against all risks of direct physical loss, excluding earthquake and flood, for a minimum amount of $2,000,000. Contractor shall maintain the builder risk insurance required by this subsection until the date a certificate of occupancy is issued issuance of a certificate of occupancy for the Work.

DURATION OF CONTRACTS-NAMED INSUREDS-LIABILITY INSURANCE:

For contracts exceeding time periods of 30 days, it is required that the vendor name the City of Cocoa as an additional insured on their Liability Insurance policies and submit proof of same in the form of a certificate of insurance before work is begun. A copy of a current Certificate of Insurance shall be provided to the City by Contractor upon the Effective Date of this Agreement which satisfied the insurance requirements of this Article. Renewal certificates shall be sent to the City 30 days prior to any expiration date. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the City and the State of Florida, Department of Transportation, or as provided in accordance with Florida law.

**a. Any other provisions that will be modified:**

The CONTRACTOR must provide proof of Employment Eligibility by completing the E-Verify Contractor Affidavit **(Exhibit B)** in accordance with Florida Statute § 448.95; via E-Verify (https://www.e-verify.gov), which is an internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees. This must be completed prior to the CITY issuing any Purchase Orders or requesting services.

**b. Address change for the City of Cocoa:**

Notwithstanding the address and contact information for the government entity as set out in Exhibit "A," the Vendor agrees that he/she/it will send notices, invoices and will conduct all business with the City of Cocoa, attention of Accounts Payable, at 65 Stone Street, Cocoa Florida 32922, telephone number (321) 433-8633, facsimile number: (321) 433-8608 and email accountspayable@cocoafl.org.

**c.** Notwithstanding anything in Exhibit "A" to the contrary, the venue of any dispute will be in Brevard County, Florida. Litigation between the parties arising out of this contract must be in Brevard County, Florida in the Court of appropriate jurisdiction. The law of Florida will control any dispute between the parties arising out of or related to this Piggyback Contract, the performance thereof or any products or services delivered pursuant to such contract.

**d.** Notwithstanding any other provision in Exhibit "A" to the contrary, there shall be no arbitration with respect to any dispute between the parties arising out of this Contract. Dispute resolution shall be through voluntary and non-binding mediation, negotiation or litigation in the Court of appropriate jurisdiction in Brevard County, Florida, with the parties bearing the costs of their own legal fees and related costs with respect to any dispute resolution, including litigation.

**e.** All other provisions in the original government contract (Exhibit "A") are fully binding on the parties and will represent the agreement between the City of Cocoa and the Vendor.

**f.** This contract is not a requirements agreement nor is it an exclusive agreement. Accordingly, the City of Cocoa reserves the right to purchase the goods or services that are the subject hereof from any alternative vendor during the contract term, regardless of contrary language in the underlying contract that is being piggybacked.

**VENDOR:**

Crom, LLC
Attn: Robert Oyenarte
250 SW 36th Terrace
Gainesville, FL 32607
(352) 372-3436
ccradmin@cromcorp.com

**Crom, LLC**

Entered this 3rd day of April 2023

Jeffrey Pomeroy, CFO

(Print Name / Title)

(Signature)

4/30/2023

(Date)

**City Council Approval Required**

X Yes (Approved by Mayor)

☐ No (Approved by City Manager)

**CITY OF COCOA**

By: N/A

Date: _____

**(Stockton Whitten, City Manager)**

City Manager (For purchases up to the limit of the City Manager's purchase order authority, this signature alone as attested will be sufficient).

By: _____

Date: _____

**(Michael C. Blake, Mayor)**

Mayor (For purchases exceeding City Manager's purchase order authority).

_____

Attested By: City Clerk

CONTRACTOR E-VERIFY AFFIDAVIT

I hereby certify that Crom, LLC [insert contractor company name] does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with, section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system.

A true and correct copy of Crom, LLC [insert contractor company name] proof of registration in the E-Verify system is attached to this Affidavit.

Print Name: Jeffrey Pomeroy, CFO

Date: 4/3/223

STATE OF FLORIDA

COUNTY OF Alachua

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 3rd (date) by April (name of officer or agent, title of officer or agent) of Crom LLC (name of corporation acknowledging), a Delaware (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

[Notary Seal] Notary Public

Notary Public State of Florida
Erica Driver
My Commission HH 030029
Expires 10/19/2024

Erica Driver

Name typed, printed or stamped

My Commission Expires: October 19, 2024

WEST PALM BEACH

CITY OF WEST PALM BEACH
**MASTER WATER STORAGE TANK CLEANING AND REPAIR SERVICES AGREEMENT**

**Contract No. 20696**
**Procurement Method: ITB 18-19-115**

**Provider Name**: **CROM, LLC**

**Provider Address**: 250 SW 36th Terrace
Gainesville, FL 32607

Email: ccradmin@cromcorp.com

Telephone: 352-372-3436

FEI/EIN # 59-0702495

THIS CONTRACT is made and entered into by and between the **PROVIDER** identified above and the **CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida, whose address is 401 Clematis Street, West Palm Beach, Florida 33401 (the "City").

WHEREAS, the City issued its Invitation to Bid No. 18-19-115 (the "ITB") pursuant to state and local law to solicit contractors to perform water storage tank cleaning and repair services on as needed basis, (the "Work" or "Services"); and

WHEREAS, the Provider submitted its Bid in response; and

WHEREAS, the City determined that the Provider's Bid represents the best value to City and wishes to contract with Provider under the terms and conditions contained in the Invitation to Bid;

NOW THEREFORE, in consideration of the promises and mutual covenants and obligations herein contained, and subject to the terms and conditions herein stated, the City and Provider understand and agree as follows:

**1. THE WORK.**

1.1 Services. The Provider hereby agrees to furnish all the materials, equipment, tools, labor, supervision, licensing, permits, transportation and incidentals necessary to provide water storage tank cleaning and repair, on an as-needed basis for various City tanks. The Services shall be provided subject to and in accordance with the terms, conditions and provisions of the ITB, attached as **Exhibit A**, and the Bid, attached as **Exhibit B**. The ITB and Bid are expressly incorporated into this Agreement by reference. The ITB, Bid and this Agreement are collectively referred to as the "Contract Documents". All Services shall be performed in accordance with the Technical Specifications set forth in the ITB. Unless otherwise specified, the Provider agrees to furnish all equipment and labor necessary for the performance of the Work in a good, firm, substantial and workmanlike manner, in accordance with any applicable plans, drawings, and technical specifications. The Provider shall, if required, furnish satisfactory evidence as to the kind and quality of materials. There is no guarantee of any minimum value, quantity or frequency of work under this Agreement.

Services shall: (i) meet the requirement of Florida Administrative Code Section 62-5455.350(2);
(ii) comply with the OSHA Regulation for Lock Out/ Tag Out of each tank while diving.

Tank inspections shall be performed under the responsible charge of a professional engineer licensed in Florida.

Unless otherwise specified, all materials used shall be new and both workmanship and materials shall be of good quality. Services shall be provided in accordance with all applicable codes and standards, including OSHA, AWWA, ACI and standard pre-stressed concrete tank design.

1.2 Service, Fulfillment and Emergency Response Time. The Provider shall provide a 24-hour, 7 days a week telephone answering or beeper service to accept and record emergency service call requests from the City. Emergency service call requests such as, but not limited to, situations which present an unsafe or destructive condition, shall require work to be started within three (3) hours from time call is placed and Provider shall be available and service performed 24 hours a day, 7 days a week.

1.3 It is hereby made a part of this Agreement that before, during and after a public emergency, disaster, hurricane, flood or Act of God that the City, shall receive services on a "first priority" basis.

1.4 Services Provided in Response to Natural Disaster / Emergency. Provider provides services that the City may require in the event of a hurricane or other disaster. Provider acknowledges and agrees that in such event, the City may apply to the State of Florida or the federal government for funds which will be used to pay Provider or reimburse the City for payments made to Supplier. FEMA will only consider reimbursing contracts which contain the requisite FEMA provisions. Provider desires to be eligible to be awarded disaster work and be compensated through federal funds. The City and Provider agree that with respect to any services or work performed or provided by Provider or its subcontractors under the Agreement arising or related to a disaster event, the provisions set forth in the FEMA Addendum (the "FEMA Requirements"), a copy of which is attached hereto as **Exhibit C** and incorporated herein by reference, shall apply. The FEMA Requirements shall only modify this Agreement upon the provision by Provider of work or services required as a result of a disaster. The terms and conditions of the Agreement and the FEMA Requirements should be read to operate in concert, except where directly in conflict. In the event of a conflict between the terms of the Agreement and the FEMA Requirements, the FEMA Requirements shall govern and prevail.

1.5 Permits. Contractor shall obtain all permits and licenses required by law or ordinance and shall maintain the same in full force and effect. All permits and licenses shall be obtained at the Contractor's expense. Any changes of the licenses, permits, or certification shall be reported to the City within thirty (30) days.

**2. Non-Exclusive.** This Agreement is non-exclusive and the City reserves the right to contract with other parties for the Services provided herein.

**3. Method of Ordering.**

3.1 Direct Orders/Purchase Orders. Services under $10,000 may be requested by Purchase Order. For work not exceeding $10,000, the Provider will have three (3) working days from the date of the City's request to submit a budgetary estimate. Failure to timely submit a budgetary estimate may result in loss of work to the Provider and the City awarding work to another available contractor. In the event that the City and Provider fail to agree on the proposed scope and cost estimate, the City may move on to negotiate with another provider.

3.2 Work Orders. Services in excess of $10,000 will be requested by the City via Work Order. As funding becomes available, the City will issue a separate Work Order for each individual assignment on as needed basis, which shall be substantially in the same format as the Work Order attached at the end of this Contract and incorporated herein as **Exhibit D**. The services to be provided under the assignments shall commence and be completed by the dates indicated on the Work Orders. The individual Work Orders will specify the work to be performed, its location and not-to-exceed cost (based on the contract unit prices), and a schedule for performance. No work in excess of $10,000 is authorized until a Work Order is fully executed by the City. All terms and conditions of this Agreement will be applicable to each Work Order. Upon completion of Work Order task, the Provider will submit an individual invoice, a copy of the original Work Order and the appropriate completed Small Business participation form as required by the Contract Documents. In the event that the City and Provider fail to agree on the proposed scope, schedule and cost estimate, the City may move on to negotiate with another available provider.

**4. Estimated Expenditures**. City does not guarantee any minimum amount of work needed or work orders issues, or to the extent of services to be required under this Agreement. It is understood and agreed that the City's obligation to pay under the Agreement is contingent upon an annual appropriation for its purpose by the City.

**5. Rates**. The rates for the Services and materials shall be those established in Provider's Schedule of Bid items in response to the City's ITB which are incorporated into this Agreement by reference. The fee for each individual work order shall be specified in the work order and shall be based on the rates from the ITB.

**6. Invoices**. Invoices must identify the PO number and shall be submitted to: **West Palm Beach Finance Department, Attn: Accounts Payable**, P.O. Box 3366, West Palm Beach, FL 33402-3366. Invoices shall show the nature of the service and dates(s) of service. Invoices based on hourly rates shall show the actual hours worked, person performing services, nature of the service, hourly rate, and dates(s) of service. Invoices may be submitted no more frequently than monthly. However, all services rendered prior to September 30th of any given year are required to be invoiced by September 30th of that year. If Provider fails to submit an invoice within one (1) year after completion of all Services, any amounts owed as final payment shall be forfeited. Forfeiture will not apply to existing claims or pending legal proceedings. **Provider shall provide W-9 or FEIN# to City with first invoice.**

**7. Payment**. The Fee shall be paid based on receipt of a proper invoice in accordance with the invoice schedule indicated above. Payment of invoice(s) will be made in accordance with the Local Government Prompt Payment Act, Section 218.70, et al., Florida Statutes, as amended, which provides for prompt payment, interest payments, a dispute resolution provided detailed invoices are submitted in compliance with the terms of this Agreement. No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement by Provider, either wholly or in part, and no payment shall be construed to be an acceptance of or to relieve Provider of liability for the defective, faulty or incomplete rendition of the Services.

**8. Term**.

8.1 Term of Contract. Subject to the termination rights of the City as provided herein, this Contract shall have a term of three (3) years, commencing as of the date of execution by the City.

8.2 Renewal. Upon the mutual written agreement of the parties, this Contract may be renewed for an additional two (2) year term. Contract renewal will only be effective upon a written contract amendment executed by both parties. Renewal terms and conditions will be the same as the base contract. Any renewals will be subject to appropriation of funds by the City.

**9. No Lien**. The Provider shall not at any time permit any lien, attachment, or any other encumbrance under the laws of the State of Florida, or otherwise, by any person or persons whomsoever to be filed or recorded against the City, against any City property or money due or to become due for any work done or materials furnished under this Agreement by Provider.

**10. Representations, Warranties and Covenants of Provider**

10.1 Authority. Provider hereby represents and warrants to the City that it has full power and authority to enter into and fully perform its obligations under this Agreement without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it.

10.2 Duly Licensed. Provider represents that it is duly licensed to perform the Services under this Agreement and that it will continue to maintain all licenses and approvals required to conduct its business.

10.3 No Contingency. Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Provider, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by Provider, the City shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the contract fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**11. Standard of Care**. The standard of care for all services performed or furnished by Provider under this Agreement will be the care and skill ordinarily used by members of Provider's profession practicing under similar circumstances or at the same time and in the same locality.

**12. Safety Regulations**. Provider shall ensure that the all Equipment, materials and procedures and training provided under this Agreement meet all local, State, OSHA and other Federal safety and any other applicable safety regulation.

**13. Damage to Property**. The Provider shall, at all times, guard against damage or loss to the property of the City and shall be responsible for replacing or repairing any such loss or damage. The City may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property due to Provider or its agents or employees. Provider is responsible for any damage to public or private property by Provider, its employees or agents while performing the work under this Agreement.

**14. Compliance with Laws**.

14.1 Compliance with Laws. Provider shall comply with all applicable City, State and Federal laws relating to the scope of work under this Contract, now or hereafter in effect. It shall not be grounds for a change order that Provider failed to investigate the codes and regulations of all applicable government agencies with jurisdiction over the Work.

14.2 Non-Discrimination. In performing under this Agreement, Provider shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

14.3 Discriminatory Vendor List. In accordance with Fla. Stat. Sec. 287.134, Provider represents that it has never been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

14.4 Public Entity Crimes. In accordance with Fla. Stat. Sec. 287.134, Provider certifies that Provider, its affiliates, suppliers, subcontractors and consultants who will perform under this Agreement have not been placed on the Convicted Vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date of this Agreement and that execution of the Agreement will not violate the statute. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

14.5 Scrutinized Companies Lists. Pursuant to Fla. Stat. Sec. 287.135, Provider represents that Provider is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Additionally, if the Contract Price is One Million Dollars ($1,000,000) or more, Provider represents that neither the Provider firm nor its principals or owners are listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

14.6 Federal Labor / Employment Laws. In accordance with Fla. Stat. Sec. 255.20, Provider represents that it has not been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

14.7 Prohibited Persons. Neither Provider nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Provider) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf), (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "Prohibited Person").

**15. Independent Contractor**. Provider acknowledges and agrees that Provider is an independent contractor of the City. Provider more specifically acknowledges that its employees will not be covered by the City's workers'

compensation insurance; Provider will be solely and exclusively responsible for payment of all federal and state income taxes due in respect of all compensation and/or other consideration paid by the City to Provider under this Agreement. Provider shall be responsible for social security, unemployment and disability taxes and all other payroll taxes due with respect to Provider's employees who provide Services under this Agreement. Provider acknowledges that it shall have no authority to bind City to any contractual or other obligation whatsoever. Provider shall be entitled to seek and accept other engagements and/or employment during the term of this Agreement so long as such other employment or engagements do not interfere with the performance of Provider's duties under this Agreement. Provider shall be responsible to the City for all work or services performed by Provider or any person or firm engaged as a sub-consultant or subcontractor to perform work in fulfillment of this Agreement.

**16. Right to Audit.** Provider shall maintain adequate records for the Services performed under this Agreement for five (5) years following completion of the Services, or conclusion of any litigation regarding this Agreement. The City shall have the right to audit Provider's books and records, at the City's expense, upon prior notice, with regard to the Services provided to the City under this Agreement. Provider shall allow the City or its representative to interview all current or former employees to discuss matters pertinent to this Agreement. If an audit inspection in accordance with this section discloses overpricing or overcharges (of any nature) by Provider to the City in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the City's Internal Audit department shall be reimbursed to the City by the Provider and (2) a 15% penalty of the overpricing or overcharges shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Provider within 45 days from presentation of City's findings to Provider. Failure by Provider to permit such audit shall be grounds for termination of this Agreement by the City.

**17. Insurance.**

17.1 All Insurance Policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Palm Beach County, Florida, and (c) have a Best's rating of A- VI or better.

17.2 Coverage shall be maintained without interruption from the effective date of this Agreement until date of final payment and termination of any coverage required to be maintained after final payment. Any liability coverage on claims made basis shall remain effective for five (5) years after final payment. If any of the required insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

17.3 The City shall be provided a minimum of thirty (30) days prior written notice of any adverse material change, including any reduction, non-renewal or cancellation of Contractor's required insurance coverage, or any increase in the Provider's self-insurance retention.

17.4 Required Coverage. Provider shall maintain following liability coverage, in the limits specified:

Commercial General Liability. Commercial General Liability Insurance for all operations including but not limited to Contractual, Products and Completed Operations and Personal Injury with limits of not less than Two Million Dollars ($2,000,000) (aggregate) and One Million Dollars ($1,000,000) per occurrence combined single limit for bodily injury and property damage. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements and the policy must include coverage for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. May not be subject to a self-insured retention or deductible exceeding $25,000.

Business Automobile Liability: Business automobile liability insurance with minimum limits of Two Million Dollars ($2,000,000) per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements and must include owned vehicles and hired and non-owned vehicles. May not be subject to a self-insured retention or deductible exceeding $10,000.

Worker's Compensation: Worker's Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than $500,000 "each accident," $500,000 "disease policy limit," and $500,000 "disease each employee."

17.5 Additional Insureds. All required insurance (except Worker's Compensation and Professional Liability) shall include an Additional Insured endorsement identifying "the City of West Palm, its commissioners, officers, employees and agents", as Additional Insureds. No costs shall be paid by the City for an additional insured endorsement.

17.6 Certificate of Insurance. Provider shall provide the City Risk Manager or the City Agreement Manager with a copy of the Certificate of Insurance and endorsements evidencing the types of Insurance and coverage required by this article within three (3) calendar days of Provider's receipt of Notice of Intent to Award the Agreement and, at any time thereafter, upon request by the City. It is Provider's responsibility to ensure that the Risk Manager and the Agreement Manager both have a current Insurance Certificate and endorsements at all times.

17.7 Renewal of Insurance. Provider shall be responsible for assuring that the insurance certificate/ endorsements required in conjunction with this section remains in force for the duration of the contractual period. If the insurance certificate/endorsements are scheduled to expire during this period, Provider shall be responsible for submitting a new or renewed insurance certificate/ endorsements to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificate/endorsements are not replaced with a new or renewed certificate which covers the contractual period, Owner may suspend this Agreement until such time as the new or renewed certificate/endorsements are received by City.

17.8 Waiver of Subrogation. The City and Provider waive all rights against (1) each other and any of their subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the Agreement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the City as trustee. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**18. Indemnity.** Provider agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from City, its officials, agents, or employees by reason of any damage to property or personal injury, including death, and which damage, injury or death arises out of or is incidental to or in any way connected with Provider's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of Provider in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death arises out of or is incidental to or in any way connected with Provider's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by Provider. This indemnification includes, but is not limited to, the performance of this Agreement by Provider or any act or omission of Provider, its agents, servants, contractors, patrons, guests or invitees and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. Provider agrees to pay all claims and losses and shall defend all suits, in the name of the City, its employees, and officers, including but not limited to appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Provider under this indemnification provision. To the extent considered necessary by the City, any sums due Provider under this Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This paragraph shall not be construed to require Provider to indemnify the City for its own negligence, or intentional acts of the City, its agents or employees. Nothing in this Agreement shall be deemed to be a waiver of the City's sovereign immunity or a waiver of the limitations under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

**19. Termination**.

19.1 Either party may terminate this Agreement for cause in the event that: (1) the other party violates any material provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of its obligations hereunder, upon written notice to said defaulting party thirty (30) calendar days prior to termination. As a condition precedent to termination for cause, the defaulting party shall have the right to cure within a reasonable period

19.2 The City shall have the right to terminate this Agreement, in whole or in part, with or without cause, and for its convenience, upon five (5) days written notice to Provider. Provider shall have no right to terminate this Agreement for convenience.

19.3 In the event of termination, Provider shall immediately deliver all documents, written information, electronic data, public records, and other materials concerning this Agreement in Provider's possession to the City and shall cooperate in transition of its duties to appropriate parties at the direction of the City.

19.4 In the event of termination, the City shall compensate the Provider for all authorized work satisfactorily performed through the termination date under the payment terms contained in this Agreement.

19.5 Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability hereunder, except that the provisions of this Section and the provisions regarding the right to audit, property rights, insurance, indemnification, governing law and litigation shall survive termination of this Agreement and remain in full force and effect.

**20. Notices**. All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to Provider at the address on the first page of this Agreement; or to the City, to P.O. Box 3366, West Palm Beach, FL 33402, attention: City Administrator,, with a copy to the City Attorney, or to such other address or person as shall be designated by a party in a written notice given in the manner required hereby.

**21. Taxes.** Provider understands that in performing the Services for the City, Provider is not exempt from paying sales tax to Provider's suppliers for materials required for Provider to perform under this Agreement. Provider shall not be authorized to use City's tax exemption number for purchasing supplies or materials.

**22. Availability of Funds**. This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the City. If funding for this Agreement is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Agreement become unavailable, the City may terminate this Agreement upon no less than twenty-four (24) hours' notice to Provider. The City shall be the sole and final authority as to the availability of funds.

**23. Non Discrimination**. Provider shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

**24. Assignment.** This Agreement requires the skills and experience of Provider and may not be assigned by Provider. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

**25. Force Majeure**. Any deadline provided for in this Agreement may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God, provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions. When one of the foregoing conditions interferes with contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so

interfered with; provided that no such extension shall be made unless notice thereof is presented by Provider to City in writing within ten (10) business days after the start of the occurrence of such delay; and further provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

**26. Ethics; Conflict of Interest.**

26.1 Provider shall comply with the ethics requirements of the City Code and the Palm Beach County Ethics Code.

26.2 Conflicts of Interest.

a. Provider represents that it has not given or accepted a kickback in relation to the Contract and has not solicited the Contract by payment or acceptance of a gratuity or offer of employment.

b. Provider represents that it has not solicited the Contract by payment of a gift or gratuity or offer of employment to the mayor or members of the City of West Palm Beach commission, any official, department director, head of any City of West Palm Beach agency, employee of the City of West Palm Beach, any City of West Palm Beach agency or selection committee, or member of any board, committee, or agency of the City of West Palm Beach or any of their immediate family or close personal relation (the "Conflict Group").

c. Provider represents that it does not employ, directly or indirectly any member of the Conflict Group.

d. Provider represents that neither it nor its subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any City commissioner, mayor or officer, during tenure or for 2 years thereafter, has any interest, direct or indirect.

e. Provider represent that no member of the Conflict Group, who alone, or together with his household members, is a stockholder or holder of an interest, of 5% or more, in any business entity affiliated with Provider.

f. Provider represents that it has not knowingly given, directly or indirectly, any gift with a value greater than $100 in the aggregate in any calendar year to any member of the Conflict Group that provides regulation, oversight, management or policy-setting recommendations regarding Provider or its business.

g. Provider, its officers, personnel, subsidiaries and subcontractors shall not have or hold any continuing or frequently recurring employment, contractual relationship, business association or other circumstance which may influence or appear to influence Provider's exercise of judgment or quality of the Services being provided under this Agreement. Provider, its officers, personnel, subsidiaries and subcontractors shall not perform consulting work for any third party that would in any way be in conflict with the Services to be provided to the City under this Agreement.

h. Provider, its officers, personnel, subsidiaries and subcontractors shall not, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding unless compelled by court process. Further, Provider agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City or in connection with any pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

i. Provider shall promptly notify the City in writing by certified mail of all potential conflicts of interest or any event described in this Section. Said notification shall identify the prospective business interest or circumstance and the nature of work that Provider intends to undertake and shall request the opinion of the City as to whether such association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Provider. The City agrees to notify the Provider by certified mail of its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Provider, the City shall so state in its opinion and the Provider may, at its option, enter into said association,

interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by Provider under this Agreement.

j. In the event Provider is permitted to utilize subcontractors to perform any Work under the Contract, Provider agrees to prohibit such subcontractors, by written contract, from having any such conflicts of interest.

26.3 Lobbying Certification. Provider certifies to the best of its knowledge and belief that no funds or other resources received from the state in connection with the Contract will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

26.4 Inspector General. Provider is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of the Contract, and may demand and obtain records and testimony from Provider and its subcontractors. Provider understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Provider or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by City to be a material breach of the Agreement justifying its termination.

**27. Small Business Requirements.** Provider shall comply with the City's Small Business Ordinance set forth in Chapter 66 of the Code of Ordinances of the City of West Palm Beach, which is incorporated herein by this reference. Provider shall comply with the small business commitment contained in Provider's Bid, or as approved by the Small Business Division. Provider shall maintain all relevant records and information necessary to document compliance with the Small Business Ordinance and shall allow the City to inspect and audit such records.

**28. Public Records Law.**

28.1 **Public Records**. Provider shall comply with Chapter 119, Florida Statutes, regarding public records. Provider shall keep and maintain all documents, correspondence, reports, computer files, emails, plans, drawings, calculations, technical specifications, sketches, photographs, videos, illustrations, tracings, specifications, maps, etc., prepared in order to perform the services under this Agreement. Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records requirements may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by Provider, except as authorized by law and specifically authorized by City.

28.2 A request to inspect or copy public records relating to this Contract must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Provider of the request, and the Provider shall provide the records to the City or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the City, upon request, in a format that is compatible with the information technology systems of the City.

28.3 Upon completion of the Agreement, Provider shall transfer, at no cost, to the City all public records in possession of Provider. Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

28.4 Failure of the Provider to provide public records to the City within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of the Contract by the City, in addition to any other remedies available under the Contract or by law.

28.5 IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY CLERK, WHO IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AT:

Office of the City Clerk
City of West Palm Beach
401 Clematis Street

West Palm Beach, FL 33401
561-822-1210
CityClerk@wpb.org

**29. Remedies**. No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy granted by this Agreement or now or hereafter existing at law or in equity or by stature or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof. In addition to any other remedies, in the event of a breach or violation of the Agreement by Provider, Provider may be subject to debarment or suspension from consideration for the award of additional contracts from the City, pursuant to the terms and procedures set forth in the City Code.

**30. Time of Essence**. Time shall be of the essence for each and every provision of this Agreement.

**31. Governing Law; Jurisdiction; Venue; Litigation**. This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The City and Provider submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or the Federal Southern District of Florida. Provider agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

**32. Severability**. In the event that any term or provision of this shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

**33. Waiver**. Any waiver by either party hereto of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

**34. Headings**. The headings contained in this Agreement are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Agreement.

**35. Attorney Fees**. In the event suit is filed to construe or enforce this Agreement, each party in such suit shall bear its own costs and expenses incurred in connection therewith, including, but not limited to, attorneys' fees and costs through trial and appeal.

**36. Controlling Provisions.** Except as otherwise specifically provided herein, in the event of any conflict between the specific provisions of this Agreement and the requirements or provisions of the Procurement Solicitation and/or Bid, the provisions shall be given precedence in the following order: (1) this Agreement, (2) the Procurement Solicitation; and (3) the Bid. Wherever possible, the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents.

**37. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument.

**38. No Verbal Agreements.** No verbal agreement or conversation with any officer, agent or employee of City either before or after execution of this Agreement shall affect or modify any of the terms or obligations contained in any of the documents comprising said Contract. All Contract amendments shall be in writing and executed by the authorized representatives of both City and Provider.

**39. Exhibits**. The Exhibits referenced in this Agreement are incorporated into this Agreement, regardless of whether they are attached.

**40. Entire Agreement; Amendment.** This Agreement including the Procurement Solicitation, the Bid and any Exhibits, which are incorporated into this Agreement in their entirety, embody the entire agreement and

understanding of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. This Agreement may only be amended or modified by written amendment executed by the City and Provider.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year last executed below.

**PROVIDER**
**CROM, LLC**

By: _____

Print Name: ROBERT G. QUENARTE

Title: PRESIDENT

**CITY OF WEST PALM BEACH**

By: _____
Keith A. James, Mayor

Attest: _____
Deputy City Clerk

Date: 6/4, 2019.

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

**EXHIBIT A**
**ITB 18-19-115**

**EXHIBIT B**
**BID**

**EXHIBIT C**
**FEMA TERMS**




## CITY OF WEST PALM BEACH
## FEMA CONTRACT TERMS

These FEMA Contract Terms are made a part of your Contract with the City:

The term "Contractor", as used throughout this document shall mean the Contractor, Provider, Consultant, etc., as applicable with respect to the Contract or Agreement.

The term "Contract" as used throughout this document shall mean the underlying contract or agreement, as applicable.

Contractor provides services that the City may require in the event of a hurricane or other disaster. Contractor acknowledges and agrees that in such event, the City may apply to the State of Florida or the federal government for funds which will be used to pay Contractor or reimburse the City for payments made to Contractor. FEMA will only consider reimbursing contracts which contain the requisite FEMA provisions. Contractor desires to be eligible to be awarded disaster work and be compensated through federal funds. The City and Contractor agree that with respect to any services or work performed or provided by Contractor or its subcontractors under the Contract arising or related to a disaster event, the provisions set forth in this Addendum (including Form FHWA-1273) (collectively, the "FEMA Requirements") shall apply. The FEMA Requirements shall only modify the Contract upon the provision by Contractor of work or services required as a result of a disaster. The terms and conditions of the Contract and the FEMA Requirements should be read to operate in concert, except where directly in conflict. In the event of a conflict between the terms of the Contract and the FEMA Requirements, the FEMA Requirements shall govern and prevail.

A. Contracts to received funding derived from federal grants must comply with federal guidelines. The federal funds appropriated by the Federal Emergency Management Agency (FEMA) will be administered through the State of Florida.

B. **In the event of a conflict between the FEMA Requirements listed in this Addendum and other provisions of the Contract, the FEMA Requirements will govern and prevail.**

C. **Payment**. Payment shall be based on the unit rates/prices pursuant to the Contract Fee Schedule. Contractor shall submit invoices covering no more than a 30-day period.

D. **Additional Remedies**. In addition to any other remedies provided for in the Contract or to which the City may be entitled at law or in equity, in the event of a breach or violation of the Contract by Contractor, Contractor shall be subject to debarment or suspension from consideration for the award of additional contracts from the City, including but not limited to contracts related to disaster relief or recovery, pursuant to the terms and procedures set forth in the City Code.

E. **Termination for Convenience**. The City may terminate this Contract at its convenience with or without cause upon written notice of termination to Contractor. In the event of such a termination by the City, the City shall be liable for the payment of all Work properly performed prior to the effective date of termination and for all portions of materials, supplies, services, and facility orders which cannot be cancelled and were placed prior to the effective date of termination and other reasonable costs associated with the termination. Notwithstanding the preceding, under no circumstances shall the City be liable to Contractor for lost profits or overhead for work, materials or services not performed or delivered to the City.

F. **Compliance with State and Federal Reporting Requirements**. Contractor and its subcontractors shall comply with and the Contract is subject to the requirements and regulations of the

Federal Emergency Management Agency and the State of Florida Division of Emergency Management pertaining to reporting.

G. **Civil Rights**
(Applicable to All FEMA Contracts)

The following requirements will apply to the Contract and any sub-contracts:

(1) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

(2) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities, and which prohibits discrimination in the areas of employment, public accommodations, transportation, telecommunications and government services.

H. **No Obligation by the Federal Government**
(Applicable to all FEMA contracts)

(1) Absent the express written consent by the Federal Government, the Federal Government or FEMA is not a party to the Contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

I. **Access to Records**
(Applicable to all FEMA contracts; DHS Standard Terms and Conditions, v. 3.0 XXV)

(1) The Contractor agrees to provide the City, State, FEMA, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) The Contractor agrees to maintain all books, records, accounts and reports required under the Contract for a period of not less than three (3) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case Contractor agrees to maintain same until the City, the State, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

J. **Procurement of Recovered Materials**
(Applicable to all FEMA contracts, 42 USC s. 6962; 2 CFR Part 200, Appendix II, K; 2 CFR s. 200.322)

(1) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, http://www.epa.gov/cpg/. The list of EPA-designate items is available at http://www.epa.gov/cpg/products.htm.

K. **DHS Seal, Logo and Flags**
(Applicable to all FEMA contracts; DHS Standard Terms and Conditions, v. 3.0 XXV)

The Contractor shall not use the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA approval.

L. **Compliance with Federal Law, Regulations, and Executive Orders**
(Applicable to all FEMA contracts)

This is an acknowledgement that FEMA financial assistance will be used to fund the Contract only. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives as applicable, including but not limited to:

1. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 USC Sec. 5121, et. seq.
2. Resource Conservation and Recovery Act
3. National Historic Preservation Act
4. Mandatory Standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act

M. **Immigration and Naturalization Act**.
(Applicable to all FEMA contracts)

Contractor shall not knowingly employ unauthorized alien workers in violation of 8 USC §1324a(e) [§74A(e) of the Immigration and Nationality Act] and such employment of unauthorized aliens shall be grounds for unilateral termination of the Contract/Agreement.

N. **Fraud and False or Fraudulent or Related Acts**
(Applicable to all FEMA contracts)

The Contractor acknowledges that 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

O. **Indemnity of Funding Entities**.
(Applicable to all FEMA contracts)

Contractor hereby agrees to indemnify and hold harmless the State of Florida, the Government of the United States of America (including but not limited to the Federal Emergency Management Agency and the Federal Highway Administration) and the City and their officers, agents, employees and elected officials from and against any and all liability, claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees for trial and appeal, and for the preparation of same arising out of Contractor's, its officers, agents, employees and subcontractors' acts or omissions associated with this Contract.

P. **Performance and Payment Bonds**.
(Applicable to all FEMA contracts)

If not already required under the Contract, and if requested by the City, the Contractor shall, prior to the commencement of operations, furnish a Performance and Payment Bond, executed by a surety company authorized to do business in the State of Florida, in the amount of the estimated contract value, which bond shall be conditioned upon the successful completion of all work, labor, services and materials to be provided and furnished under the contract and the payment of all subcontractors, materials and laborers. Said bonds shall be subject to the approval by the City.

Q. **Equal Employment Opportunity**
(Applicable to All FEMA Construction Contracts)

During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be

canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

R. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**
(Applicable to All FEMA Contracts and Subcontracts; Executive Order 12549, Executive Order 12689, 2 CFR Part 180; 2 CFR Part 3000)

a. By signing this Addendum, the Contractor is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the Contractor to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The Contractor shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

d. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions."

S. **Materials and Supplies**.
(Applicable to all FEMA contracts)

All manufactured and unmanufactured articles, materials and supplies which are acquired for public use under this Contract have been produced in the United States as required by 41 USC §10a, unless it would not be in the public interest or unreasonable in cost.

T. **Clean Air Act and the Federal Water Pollution Control Act**
(Applicable to Contracts in Excess of $150,000)

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

U. **Certification Regarding Use of Contract Funds for Lobbying**
(Byrd Anti-Lobbying (31 USC s. 1352)--Applicable to contracts in excess of $100,000. 2 CFR Part 200, Appendix II)(1)

The Contractor certifies, by signing this Addendum, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress,

or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(2) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(3) The Contractor also agrees that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

V. **Contract Work Hours and Safety Standards Act**

(Applicable to all FEMA contracts in excess of $100,000 that involve the employment of mechanics or laborers; 29 CFR Part 5; 2 CFR Part 22, Appendix II, E)

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

W. **Davis Bacon Act and Copeland Anti-Kickback Act**

(Applicable to Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program construction contracts in excess of $2,000. Not applicable to other FEMA grant and cooperative agreement programs, including the Public Assistance Program; Davis Bacon Act--40 USC s. 3141-3144 and 3146-3148, 2 CFR Part 200, Appendix II; Copeland Anti-Kickback Act—40 USC s. 3145)
In situations where the Davis-Bacon Act does not apply, neither does the Copeland Anti-Kickback Act.

Compliance with Davis Bacon Act

(1) The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Contract. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request. Current applicable wage rates will be attached to the Contract if applicable.

(2) The Contractor agrees that all contractors engaged under contracts in excess of $2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

Compliance with Copeland Anti-Kickback Act

(1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

X. **Rights to Inventions Made Under a Contract or Agreement**
(Applicable if FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement". Does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program. 37 CFR Part 401; 2 CFR Part 200, Appendix II, F).

The contractor acknowledges that it must comply with the requirements of 37 CFR Part 401 and any implementing regulations issued by FEMA.

Y. **Subcontracts**.
(Applicable to all FEMA contracts)

To the extent applicable, the Contractor shall cause the inclusion of the provisions of this Addendum in all subcontracts.

**EXHIBIT D**
**FORM OF WORK ORDER**




**City of West Palm Beach**

**WORK ORDER NO. _____**

**Contract #: 20696.____**

**Contractor: CROM, LLC**

**Work Order Task Title: _____**

1. **Task / Project:**

A detailed Scope of Work is attached as **Exhibit A**.

2. **Schedule**

The Contractor shall commence services under this Work Order on the date indicated in the Notice to Proceed and fully complete said Work in accordance with **Exhibit** ____.

3. **Compensation**

The total amount to be paid to the Contractor by the City under this Work Order, based upon the unit prices/ rates set forth in the Contract, shall not exceed the sum of _____ ($_____) . A detailed schedule of values is attached as **Exhibit** ___.

4. **Small Business**

The small business commitment for this Work Order is _____%.

5. **Insurance.**

Contractor hereby confirms that it maintains the insurance coverages required under the Contract and that certificates of insurance evidencing current policies are on file with the City as of the date of this Work Order.

6. **Contract Reference**

This Work Order shall be performed under the terms and conditions described within the master contract titled Water Storage Tank Cleaning and Repair, dated _____ by and between the City of West Palm Beach and the Contractor named above.

Contractor:
**CROM, LLC**

By:_____

Print Name: _____

Title: _____

**CITY OF WEST PALM BEACH**

_____
Keith A. James, Mayor

Date: _____

ATTEST: _____
City Clerk

CITY ATTORNEY'S OFFICE
Approval as to form and legality
By:_____

# CERTIFICATE OF LIABILITY INSURANCE

12/31/2019 | DATE (MM/DD/YYYY) 5/16/2019

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

| | |
|---|---|
| **PRODUCER** Lockton Companies<br>444 W. 47th Street, Suite 900<br>Kansas City MO 64112-1906<br>(816) 960-9000 | **CONTACT NAME:**<br>**PHONE (A/C, No, Ext):** **FAX (A/C, No):**<br>**E-MAIL ADDRESS:** |
| **INSURED** 1378138<br>CROM, LLC<br>250 SW 36TH TERRACE<br>GAINESVILLE FL 32607 | **INSURER(S) AFFORDING COVERAGE** — **NAIC #**<br>**INSURER A :** Zurich American Insurance Company — 16535<br>**INSURER B :** St. Paul Fire and Marine Insurance Company — 24767<br>**INSURER C :** Liberty Mutual Insurance Company — 23043<br>**INSURER D :**<br>**INSURER E :**<br>**INSURER F :** |

**COVERAGES** * **CERTIFICATE NUMBER:** 16093288 **REVISION NUMBER:** XXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY<br>CLAIMS-MADE [ ] OCCUR [X]<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY [X] PRO-JECT [ ] LOC<br>OTHER: | Y | Y | GLO008374504 | 12/31/2018 | 12/31/2019 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG | $ 1,000,000<br>$ 300,000<br>$ 10,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000 |
| A | AUTOMOBILE LIABILITY<br>X ANY AUTO<br>OWNED AUTOS ONLY [ ]<br>HIRED AUTOS ONLY [X]<br>SCHEDULED AUTOS [ ]<br>NON-OWNED AUTOS ONLY [X]<br>X Hired Phys Dmg | Y | Y | BAP008374404 | 12/31/2018 | 12/31/2019 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident)<br>Comp/Coll Deds | $ 1,000,000<br>$ XXXXXXX<br>$ XXXXXXX<br>$ XXXXXXX<br>$ 2,500 |
| B | [ ] UMBRELLA LIAB [X] OCCUR<br>X EXCESS LIAB [ ] CLAIMS-MADE<br>DED [X] RETENTION $ 10,000 | Y | Y | ZUP12P5926118NF | 12/31/2018 | 12/31/2019 | EACH OCCURRENCE<br>AGGREGATE | $ 1,000,000<br>$ 1,000,000<br>$ XXXXXXX |
| C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N]<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | Y | WC5469956018 | 12/31/2018 | 12/31/2019 | X PER STATUTE [ ] OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | $ 1,000,000<br>$ 1,000,000<br>$ 1,000,000 |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

CITY OF WEST PALM BEACH IS ADDITIONAL INSURED ON GENERAL, AUTO AND EXCESS LIABILITY COVERAGE, ON A PRIMARY, NON-CONTRIBUTORY BASIS, AS REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION IN FAVOR OF THE ADDITIONAL INSURED APPLIES ON WORKERS COMPENSATION, GENERAL, AUTO AND EXCESS LIABILITY COVERAGE, AS REQUIRED BY WRITTEN CONTRACT AND WHERE ALLOWED BY LAW. COVERAGE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY.

**CERTIFICATE HOLDER**

**16093288**
CITY OF WEST PALM BEACH
401 CLEMATIS STREET
WEST PALM BEACH FL 33401-5319

**CANCELLATION**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**

Joseph M Agnello

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**EXHIBIT A**
**ITB 18-19-115**

CITY OF WEST PALM BEACH
**Procurement Department**
401 Clematis Street – 3rd Floor
West Palm Beach, FL 33401
Tel: 561-822-2100
Fax: 561-822-1564

# INVITATION TO BID
Service Agreement

ITB Number: **18-19-115**
Project: Master Water Storage Tank Cleaning and Repair Services

*Bid Submittal Deadline*

Day/Date: **March 27, 2019**
Time: **3:00 p.m.**

Location: Procurement Department
401 Clematis Street – 3rd Floor
West Palm Beach, FL 33401

Attention: Nathaniel Rubel, Procurement Supervisor

The City of West Palm Beach is accepting bids from qualified and responsible contractors to provide, on an as-needed basis, all labor, material, equipment, tools, supplies, costs and incidentals necessary to perform Water Storage Tank Cleaning and Repair services.

**Bid documents may be acquired electronically and free of charge by logging onto the City's Procurement Department's website at:**

http://wpb.org/Departments/Procurement/Solicitations/Bids-List

Hard copies of bid documents may also be acquired from the Procurement Department at the address shown above.

Time is of the essence. Bids must be received by the Procurement Department no later than the time indicated above. The time of receipt shall be determined by the time clock located in the Procurement Department. Bidders are responsible for insuring that their bid is stamped by Procurement office personnel by the deadline indicated.

**ENVELOPES CONTAINING BIDS MUST BE IDENTIFIED WITH THE BID NUMBER, SEALED, and marked in the lower left-hand corner with the firm name, ITB title, bid submittal deadline date, and time.** Bids must be in accordance with the provisions and instructions in this document. Please read the entire solicitation package carefully.

**PRE-BID CONFERENCE: THERE IS A PRE-PROPOSAL CONFERENCE SCHEDULED FOR MARCH 5, 2019 AT 10:00 AM, WATER TREATMENT PLANT (WEST ENTRANCE) 700 N. AUSTRALIAN AVENUE, WEST PALM BEACH, FL 33401. ATTENDANCE IS STRONGLY RECOMMENDED.**

***IMPORTANT*: Contact by a Bidder (or anyone representing a Bidder) regarding this ITB with the Mayor, any City Commissioner, officer, or City employee other than an employee of the West Palm Beach Procurement Department is grounds for disqualification.**

Frank Hayden,
Director of Procurement

Date: 2/00/19

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WEST PALM BEACH

# SECTION 1 – SCOPE OF WORK

The City of West Palm Beach is accepting bids from qualified and responsible contractors to provide, on an as-needed basis, all labor, material, equipment, tools, supplies, costs and incidentals necessary to provide Water Storage Tank Cleaning and Repair services.

The City will issue a separate Work Order for each individual assignment on an as-needed basis. Direct Work Orders up to $10,000 may also be issued for incidental work the City requests.

The Contractor(s) agrees to furnish all equipment and labor necessary for the performance of the Services in a good, firm, substantial and workmanlike manner. All Work shall be done in accordance with the applicable specifications set forth herein. The contract(s) awarded under this solicitation will be a three (3) year contract with an option to renew for an additional two (2) year term, based upon the same terms, prices and conditions of the contract.

Services shall: (i) meet the requirement of Florida Administrative Code Section 62-5455.350(2);
(ii) comply with the OSHA Regulation for Lock Out/ Tag Out of each tank while diving.

Unless otherwise specified, all materials used shall be new and both workmanship and materials shall be of good quality. Services shall be provided in accordance with all applicable codes and standards, including OSHA, AWWA, ACI and standard pre-stressed concrete tank design.

**Section 1. Summary of Work**

I. Description

A. The work to be performed under this contract shall be provided on as need basis.

B. The work to be performed under this contract shall consist of furnishing all labor, materials, tools, equipment and incidentals and performing all work required to perform the work as specified below, including mobilization and demobilization, as required:

1. One Three (3 MG) Million Gallon Storage Tank, Water Treatment Plant
   1.1. Cleaning and disinfection
   1.2. Curtain/Baffle Repairs
   1.3. Tank Structure Repairs
   1.4. Tank Interior and Exterior Repairs
   1.5. Interior Surfaces Repair and Replacement

2. One Five (5MG) Million Gallon Storage Tank, Water Treatment Plant
   2.1. Cleaning and disinfection
   2.2. Curtain/Baffle Repairs
   2.3. Tank Structure Repairs
   2.4. Tank Interior and Exterior Repairs
   2.5. Interior Surfaces Repair and Replacement

3. One Two (2MG) Million Gallon Tank, Ibis Re-Pump Station
   3.1. Cleaning and disinfection
   3.2. Tank Structure Repairs
   3.3. Tank Interior and Exterior Repairs
   3.4. Interior Surfaces Repair and Replacement

4. One – Ten (10) Thousand Gallon Hydro Pneumatic Tank, Ibis Re-Pump Station
   4.1. Cleaning and disinfection
   4.2. Tank Structure Repairs
   4.3. Tank Interior and Exterior Repairs
   4.4. Interior Surfaces Repair and Replacement

5. One Two (2MG) Million Gallon Tank, Cumberland Re-Pump Station
   5.1. Cleaning and disinfection
   5.2. Tank Structure Repairs
   5.3. Tank Interior and Exterior Repairs
   5.4. Interior Surfaces Repair and Replacement

6. One Two (2MG) Million Gallon Tank, St. Mary's Re-Pump Station
   6.1. Cleaning and disinfection
   6.2. Tank Structure Repairs
   6.3. Tank Interior and Exterior Repairs
   6.4. Interior Surfaces Repair and Replacement

7. One Three (32MG) Million Gallon Tank, Valley Forge Re-Pump Station
   7.1. Cleaning and disinfection
   7.2. Tank Structure Repairs
   7.3. Tank Interior and Exterior Repairs
   7.4. Interior Surfaces Repair and Replacement

8. One - One (1MG) Million Gallon Tank, Palm Beach Re-Pump Station
   8.1. Cleaning and disinfection
   8.2. Tank Structure Repairs
   8.3. Tank Interior and Exterior Repairs
   8.4. Interior Surfaces Repair and Replacement

9. One Two (2MG) Million Gallon Tank, Kaye Street Re-Pump Station
   9.1. Cleaning and disinfection
   9.2. Tank Structure Repairs
   9.3. Tank Interior and Exterior Repairs
   9.4. Interior Surfaces Repair and Replacement

10. Other Concrete Storage Tanks (as needed)

C. All work described above shall be performed as specified. For each of the items of work to be performed at the tanks identified above, the Contractor shall assume:

1. That it will be allowed to perform no more than two Cleaning and Disinfection operations in a given week.

D. Repairs and rehabilitation work is anticipated to be identified in the inspections and assessments of the tanks by others.

II. General Information

See Table 01 for the location of each tank, sized, descriptions, and containment operation requirements for each tank.

**Table 01. Tanks General Information**

| Item | Tank Name | Address/Intersection | Lat./Long | Size (Million Gallon) | Description | Dimensions | Continuous Operation Required |
|---|---|---|---|---|---|---|---|
| 1 | WTP Storage Tank - 3MG | 1009 Banyan Blvd., WPB, FL 33401 | 26° 42' 55.29" N | 3 MG | Pre-Stressed Cylindrical Composite Concrete Tank | ID = 100 ft | N |
| | | | 80° 3' 47.05" W | | | Height = 50 ft | |
| 2 | WTP Storage Tank - 5MG | 1009 Banyan Blvd., WPB, FL 33401 | 26° 42' 55.27" N | 5 MG | Pre-Stressed Cylindrical Composite Concrete Tank | ID = 130 ft | N |
| | | | 80° 3' 45.44" W | | | Height = 50 ft | |
| 3 | Ibis Re-Pump Station Storage Tank | 8740 SR7 (Sandhill Way East), WPB, FL 33412 | 26° 48' 22.52" N | 2 MG | Pre-Stressed Cylindrical Composite Concrete Tank | ID = 112 ft | N |
| | | | 80° 11' 53.30" W | | | Height = 27.15 ft | |
| 4 | Ibis Re-Pump Station Hydro Pneumatic Tank | 8740 SR7 (Sandhill Way East), WPB, FL 33412 | 26° 48' 22.52" N | 10 K | Cylindrical Steel Tank | ID = 8 ft L = 23' – 9" | N |
| | | | 80° 11' 53.30" W | | | | |
| 5 | Cumberland Re-Pump Station Storage Tank | 807 Cumberland Drive, WPB, FL 33409 | 26° 44' 57.87" N | 2 MG | Pre-Stressed Cylindrical Composite Concrete Tank | ID = 110 ft | N |
| | | | 80° 6' 4.08" W | | | Height = 28.15 ft | |
| 6 | St. Mary's Re-Pump Station Storage Tank | 901 45th Street, WPB, FL 33407 | 26° 45' 20.33" N | 2 MG | Pre-Stressed Cylindrical Composite Concrete Tank | ID = 100 ft | N |
| | | | 80° 3' 57.39" W | | | Height = 34.06 ft | |
| 7 | Valley Forge Re-Pump Station Storage Tank | 880 Valley Forge Road, WPB, FL 33405 | 26° 39' 36.43" N | 3 MG | Cylindrical Steel Tank | ID = 115 ft | N |
| | | | 80° 3' 49.33" W | | | Height = 38.63 ft | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 8 | Palm Beach Re-Pump Station Storage Tank | 758 Northlake Way, Palm Beach, FL 33480 | 26° 44' 28.52" N | 1 MG | Underground Rectangular Reinforced Concrete Tank | W = 76 ft; L= 135 ft | N |
| | | | 80° 02' 24.10" W | | | Height = 14 ft | |
| 9 | Kaye Street Re-Pump Station Storage Tank | 952 Kaye St., WPB, FL 33405 | 26° 40' 22.96" N | 2 MG | Pre-Stressed Cylindrical Composite | ID = 75 ft | N |
| | | | 80° 3' 45.95" W | | | Height = 60.55 ft | |
| 10 | WTP other concrete tanks | 1009 Banyan Blvd., WPB, FL 33401 | 26° 42' 55.29" N | | Pre-Stressed Composite Concrete Tanks | | N |
| | | | 80° 3' 47.05" W | | | | |

**SECTION 2. PAINTING**

I. Reference Drawings

See Appendix A for Site Plans and relevant Record Drawings.

II. General

A. Scope

1. This section includes, but is not necessarily limited to, standards for surface preparation and the painting of structures and equipment described in the Specifications. Furnish all materials, equipment and labor necessary to complete the work. The terms "paint" and "coating material" shall be considered synonymous.

2. Interior surfaces are defined as all inside areas of the tank, both below and above the high water line, including the underside of the roof, ladders, pipe, spider rods, stiffeners, rafters, fittings, and appurtenances.

3. Exterior Surfaces are defined as all outside areas of the tank, including the struts, rods, ladders, pipe, fittings, and appurtenances.

B. Substitutions

All coatings on a single tank shall be the products of a single manufacturer.

C. Submittals

1. The Contractor shall submit to the Owner or Owner's Representative, for review, the following information concerning the materials the Contractor proposes to use in work covered by this section:
   1.1. A list of all components (paints or other materials) to be used in each painting system required herein.
   1.2. A complete descriptive specification, including manufacturer's data sheet, of each component.
   1.3. Prior to completing the purchase and delivery of the coating material selected by the Contractor, the Contractor shall obtain a letter from the material supplier stating that the selected material is suitable and compatible for application and use as directed under these Specifications, and that if properly applied will provide metal protection and a pleasing appearance for five years or longer.
   1.4. A color chart for each color to be applied.

D. Project Meeting

Prior to ordering any of the materials covered under this section, the Contractor, Owner or Owner's Representative, painting subcontractor and paint manufacturer's representative shall attend a progress meeting, and the work to be performed under this section.

E. Quality Assurance

1. Only those systems and components which are judged acceptable by the Owner or Owner's Representative shall be utilized in the work covered by this item. No materials shall be delivered to the job site until the Owner or Owner's Representative has evaluated their acceptability.

2. The following information shall be included on the label of all containers of materials supplied under this section:

    2.1. Manufacturer's name
    2.2. Type of paint or other generic identification
    2.3. Manufacturer's stock number
    2.4. Color (if any)
    2.5. Instructions for mixing, thinning, or reducing (as applicable)
    2.6. Manufacturer's application recommendations
    2.7. Safety and storage information

3. All coating material used on this Project shall be purchased specifically for this Project and furnished in new, unopened containers.

F. Manufacturer's Representative during Painting Operations

An authorized representative of the coating manufacturer or a written application plan reviewed by the owner or owner's representative shall be present at the start-up of painting operations. Such representative or plan shall instruct the Contractor's workers on the manufacturer's application recommendations.

G. Testing Equipment

1. The Contractor shall furnish and make available to the Owner or Owner's Representative the following items of testing equipment for use in determining if the requirements of this section are being satisfied. The specified items of equipment shall be available for the owner or Owner's Representative's use at the times when field painting or surface preparation is in progress:

    1.1. Wet film gauge.
    1.2. Surface thermometer.
    1.3. Testex Replica Tape.
    1.4. "Visual Standard for Abrasive Blast Cleaned Steel", as published by the Steel Structures Painting Council Standards (SSPC-VIS 1-89).
    1.5. "Visual Standard for Power – and Hand – Tool Cleaned Steel", as published by SSPC (SSPC-VIS 3).
    1.6. Holiday (pin hole) detector (low voltage)
    1.7. Sling-psychrometer or other on-site device used to calculate relative humidity and ambient air temperature.
    1.8. Magnetic dry film gauge, meeting the requirements of SSPC-PA2, Type I or Type II, including calibration.
    1.9. "Guide and Reference Photographs for Steel Surfaces Prepared by Waterjetting" as published by SSPC (SSPC-VIS-4).

H. Product Handling

1. Delivery

    1.1. Deliver materials in original, selected containers of the manufacturer with labels legible and intact.
    1.2. Each container shall be clearly marked or labeled to show paint identification, date of manufacture, batch number, analysis or contents, and special instructions.

2. Storage

2.1. Store only acceptable Project materials on Project site.
2.2. Store material in a suitable location and in such a manner as to comply with all safety requirements including any applicable federal, state, and local rules and requirements. Storage shall also be in accordance with the instructions of the paint manufacturer and the requirements of the insurance underwriters.
2.3. Restrict storage area to paint materials and related equipment.
2.4. Place any material, which may constitute a hazard, in closed metal containers and remove daily from the Project site.

3. Safety Data Sheets (SDS)

A copy of every component's SDS shall be available at all times on the Project site.

I. Products

1. Abrasive Material

1.1. The abrasive used in the abrasive cleaning shall be a material acceptance to the regulatory agencies of the state of Florida for use in the described work. The material shall be of a shape and size to produce a uniform surface of acceptable profile to properly bond the prime coat.
1.2. The abrasive may be a combination of materials, including additives such as dust inhibitors and Blastox®.
1.3. If Blastox® is used, it shall be blended with the blasting abrasive by blending facility authorized by the TDJ Group, Inc.

2. Coating Material

2.1. Acceptable manufactures: Unless otherwise approved by the Owner or Owner's Representative, the only acceptable manufactures and products shall be those listed in the Material Schedules at the end of this section.
2.2. All applicable data currently published by the paint manufacturer relating to surface preparation, coverages, film thickness, application technique, drying and overoating times is included by reference as part of this section. It is the responsibility of the Contractor to obtain and fully understand the appropriate data sheets for the coating specified.
2.3. Products
2.3.1. Paints shall be factory mixed and delivered to the site in unbroken original packages bearing the manufacturer's name and brand designation and shall be applied in strict accordance with the manufacturer's printed specifications. Two-component coating shall be mixed in accordance with the manufacturer's instructions. All two-component coating, once mixed, shall be applied within the pot-life recommended by the manufacturer.
2.3.2. Unless otherwise specified, paints shall be of the best grade. All thinners, driers, varnish, etc., shall be of the best grade and shall be furnished by coating manufacturer for use with the specified paints.
2.4. Colors
The Owner will select the colors to be used on various portions of the work. Provide color cards for coating proposed. Where more than one coat of paint is required, job tint off-shade the paint for each undercoat to show complete coverage.

3. Mixing and Tinting

3.1. When possible, all paints and other materials shall be mixed and tinted by the paint manufacturer prior to delivery to the job site.
3.2. When job site mixing and/or tinting is required, the manufacturer's recommendations shall be strictly adhere to. The contractor shall be solely responsible for the proper conduct of all on-site mixing and/or tinning.

4. Pre-Blast Lead Treatment Coating

The pre-blast treatment coating shall be Enviro-Prep System product number 33010, as manufactured by Hoffer's, Inc. Coatings Division (800.596.6282), or Pre Tox 2000 as manufactured by NexTec, Inc. (800.338.8296).

I. Execution

A. General

1. Protect other surfaces from paint and damage. Furnish sufficient shields and protective equipment to prevent spray or droppings from fouling surfaces not being painted. Provide drapes as necessary to accomplish such. Repair damage as a result of inadequate or unsuitable protection.

2. The Contractor's on-site representative shall keep a record of work performed each day and shall submit it to the Owner or Owner's Representative weekly. The forms for this record will be furnished by the Owner or Owner's Representative.
3. No coat of paint shall be applied until the surface has been inspected and accepted by the Owner or Owner's Representative. The contractor shall give at least 24 hour notice to the Owner or Owner's Representative when cleaning is to be performed to prevent inspection delays. The Contractor shall provide the necessary access for inspection by the Owner or Owner's Representative.

4. Surface Preparation and Application Overview

4.1. Tank Exterior (Blast and Recoat) – Steel Tank and Pipes
- 4.1.1. Abrasive blast clean surface (to SSPC-SP6 finish and surface profile as specified)
- 4.1.2. Applied prime coat
- 4.1.3. Apply full intermediate coat
- 4.1.4. Apply final coat

4.2. Tank Exterior (Overcoat) – Steel Tank and Pipes
- 4.2.1. Spot clean corroded areas (to SSPC-SP2 or 3 finish)
- 4.2.2. Spot prime newly cleaned areas
- 4.2.3. Pressure-wash clean tank
- 4.2.4. Apply full intermediate coat
- 4.2.5. Apply final coat

4.3. Tank Interior (Repaint) – Steel Tank and Pipes
- 4.3.1. Abrasive blast clean surface (to SSPC-SP10 finish and surface profile as specified)
- 4.3.2. Applied prime coat
- 4.3.3. Apply stripe coat
- 4.3.4. Apply intermediate coat
- 4.3.5. Apply final coat

4.4. Tank exterior (Repaint) – Concrete Tank
- 4.4.1. Prepare surface in accordance with manufacturer's recommendations. The surface preparation shall be reviewed with the manufacturer's representative at the start-up meeting.
- 4.4.2. Apply prime coat
- 4.4.3. Apply final coat

B. Environmental Conditions

1. Environmental conditions which affect coating application include, but are not necessarily limited to, ambient air temperature, surface temperature, humidity, dew point, and environmental cleanliness. Comply with the manufacturer's recommendations regarding environmental conditions under which coating may be applied.

2. Surface preparation and cleaning of the exterior surfaces must be performed during periods of still air or only a slight breeze so that fallout of dust produce does not drift onto adjacent property. The Owner reserves the right to temporarily stop the Contractor from exterior blasting (or painting) when by observation it is apparent that the wind direction or velocity prevents compliance with the requirement. Any clean-up of fall-out on adjacent property shall be the responsibility of the Contractor.

3. All blast residue from the tank shall be property disposed of off-site by the Contractor. Copies of all waste manifest shall be provided to the Owner or Owner's representation within 10 days of removal from the site.

4. No paint shall be applied upon damp or frosty surfaces, or in wet or foggy weather. No paint shall be applied in temperatures below 40 degrees F, when freezing (32 degrees F) is predicted within 24 hours of application, or under temperature or humidity conditions not recommended by the manufacturer. However, in no case shall coatings be applied when the surface temperature is within 5 degrees F of dew point, and in no cases shall coating be applied over damp surface.

II. Safety

A. General

1. The contractor is responsible for the safety of all workers and subcontractors and suppliers performing work on this Project.

2. The Contractor shall protect the Owner, their agents, and the General Public from harm attributable to the Contractor's performance, of the work on this Project. The protection shall include, but not be limited to, providing the necessary safety equipment and instructions for its use by the Owner, and their agents.

3. The Contractor shall protect the Existing structures and environment from damage attributable to Contractor's performance, or non-performance, of the work on this Project.

4. The Contractor shall comply with the applicable standards of 29 CFR Part 1910 and 29 CFR Part 1926.
5. The listing of the following potential hazards shall in no way relieve the Contractor's responsibility for safety on this Project.

B. The interior of these tanks is considered a confined space hazard. The Contractor shall confirm to the Owner, in writing, prior to the start of the Project that the Contractor has training programs, trained personnel, and is otherwise in compliance with CFR 1910.146.

C. Lead Exposure

1. Workers shall be protected in accordance with all applicable rules and regulations having jurisdiction over this work. Specially, workers shall be protected in accordance with 29 CFR Part 1926.62.

2. All testing of the environment associated with the protection of workers, and the establishment of the degree of protection required for the workers, shall be performed under the direction of the Contractor and shall be paid by the Contractor.

III. Containment, Collection and Disposal

A. Collection and containment of surface preparation debris shall be conducted in accordance with the "Guide for Containing Debris Generated During Paint Removal Operations" (SSPC-Guide 6).

B. The means and methods of containment and collection shall be at the discretion of the Contractor, subject to the following provisions:

1. The Contractor shall provide a tarp, barrier or some other means of containment to prevent the blast debris from coming into contact with the ground.

2. The Contractor shall not allow any surface preparation debris to fall, blow or drift onto adjacent property.

3. The Contractor shall perform a soil analysis prior to any work being performed on each site and after all work has been performed on each site. Such analysis shall be in accordance with Method E for Assessing the Quality of Emissions, as described in SSPC – Guide 6.

C. If lead is present, debris disposal from tank exterior surface preparation operations shall be conducted in accordance with the Guide for Disposal of Lead-Contaminated Surface Preparation Debris (SSPC – Guide 7).

D. If the analysis of blasting residue shows that it does not contain more than 5 parts per million of leachable lead, the Contractor shall dispose of the waste represented by that analysis off site at a location of its choosing, as subject to approval of the disposal site property owner.

E. If the analysis of blasting residue shows that it contains more than 5 parts per million of leachable lead, the Contractor shall handle, collect, store, transport, and dispose of the waste represented by that analysis in accordance with all rules and regulations having jurisdiction over this work, including:

1. 40 CFR Part 260 Hazardous Waste Management System: General.

2. 40 CFR Part 261 Identification and Listing of Hazardous Waste.

3. 40 CFR Part 262 Standards Applicable to Generator of Hazardous Waste.

4. 40 CFR Part 263 Standards Applicable to Transporters of Hazardous Waste.

5. 40 CFR Part 264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.40 CFR Part 265 Interim Status Standards for Owners and Operators of

6. Hazardous Waste Treatment, Storage, and Disposal Facilities.

7. 40 CFR Part 268 Land Disposal Restrictions.

IV. Lead Paint Residue Handling

A. Notice: The Contractor is advised that the pint removal operation may create a residue which contains lead of unknown concentrations.

B. At the Contractor's option, it may apply the pre-blast lead treatment coating. If applied, it shall be done so in accordance with the manufacturer's recommendations. The manufacturer shall have an authorized representative present during the first two days of the application of this coating to instruct the Contractor's personnel and to observe the Contractor's application of the product.

C. Pilot Test Blast

1. The Contractor shall perform a pilot test blast on the exterior surface of tank. Such test blast shall be performed at least 10 days prior to full scale surface preparation activities on said surface of tank. Such test blast shall be representative of the conditions and effort and materials to be expected in the production blasting of the rest of said surface.

2. Samples of blast residue debris shall be collected and transported as indicated below.

D. Analysis of Blast Residue

1. Samples of the blast residue shall be collected in accordance with 40 CRF Part 261 and Part 262.11. Laboratory analysis shall be conducted in accordance with 40 CFR Part 268, Appendix I, Toxicity Characteristic Leaching Procedure (TCLP).

2. Laboratory analyses of the blast residue shall be performed by testing laboratory in accordance with the terms of the Cash Allowances.

E. Frequency of Sampling Analyses

1. The Contractor shall collect samples of the blast residue from the pilot blasting operation and transport them to the testing laboratory selected by the Owner.

2. Should the pilot operation reflect a concentration of the lead in the blast residue that warrants treatment of the debris as a hazardous waste, the Contractor shall collect samples every other day and transport them to the testing laboratory selected by the Owner.

3. Should the pilot operation reflect a concentration of lead in the blast residue that does not warrant treatment of the debris as hazardous waste, and has a concentration of less than 4.0 parts per million of leachable lead, the Contractor should not be required to collect further samples.

4. Should the pilot operation reflect a concentration of lead in the blast residue that does not warrant treatment of the debris as a hazardous waste, but has a concentration of greater than or equal to 4.0 parts per million of leachable lead, the Contractor shall collect samples every other day and transport them to the testing laboratory selected by the Owner. Such sampling and analyses shall continue until the concentrations reflect the level described in Paragraph F.3, above.

F. Under no circumstances shall the results of the leachable lead concentration testing of the blast residue be construed to reflect the degree of protection required for the personnel exposed to the Contractor's operation.

V. Surface preparation

A. All surfaces shall be thoroughly clean, dry, and free from oil, grease or dust. All fabricated metal products shall have all weld flux and weld splatter removed, and sharp peaks in welds ground smooth.

B. Dry Blast Method: All paint, dirt, rust, and foreign material shall be removed by abrasive blasting using the dry blast method. Standards for the surface preparation of ferrous metals required in the Material Schedules are the standards of SSPC – The Society for Protective Coatings. Care shall be taken to blast clean all pits, welds, and other rough surfaces so that the rough surfaces do not cause a "shadow" effect.

C. Pressure Wash Method

1. The exterior of the tank shall be spot, abrasive blast cleaned, hand tool, or power tool cleaned, where the coating has failed and the metal and rust is showing. The cleaned areas shall extend to the outer limits of the rusted area but is not intended to remove well bonded adjacent paint. All dirt, rust and foreign material shall be removed. Care shall be taken to blast clean all pits, welds, and other rough surfaces so the rough surfaces do not cause a "shadow" effect. After these areas are cleaned and primed, the remaining exterior surface shall be pressure wash cleaned.

2. Pressure Washing: Pressure washing shall be performed with a pump capable of producing 3,000 PSI at the tip. Washing will be performed to remove all dirt, chalked paint, loose paint, mildew, or other foreign material leaving only clean, tight-adhering paint. The initial wash water shall have a fungicide added and may have detergents added. A rinse wash shall be used to remove all residue of the detergents.

D. Steel surface preparation and cleaning shall be performed in accordance with AWWA D102, the standards and guidelines of SSPC – The Society for Protective Coatings, and as specified in this section. All cleaning shall be done in accordance with OSHA regulations.

E. Concrete surface preparation shall be in accordance with manufacturer's recommendations and SSPC-13 "Surface Preparation of Concrete".

F. The work shall be done from scaffolding or platforms of the Contractor's selection, but in no event will blasting be done from an untethered boson chair that allows the operator to be pushed away from the work surface by the reaction force of the nozzle. This requirement applies to all horizontal and diagonal rods in the tank structure as well as heavier sections and plate surfaces.

G. Inspection

1. Cleaned surfaces shall be inspected by the Owner or Owner's Representative prior to primer application.

2. Abrasive blast cleaned steel surfaces shall be inspected for degree of cleanliness and surface profile utilizing the SSPC Visual Standards (VIS 1-89) and the SSPC Surface Profile Compactor. These plates shall be securely wrapped in clear plastic and sealed to protect them from deterioration and marring.

VI. Maintenance Materials

Furnish the Owner at least one gallon of each type and color of paint used for finish coats and one gallon of each type of thinner required. Containers shall be tightly sealed and clearly labeled.

VII. Coating Repair

Where coating have been damaged, the surfaces shall be cleaned and repaired. Surfaces preparation shall be feathered into undamaged areas. Painting shall be performed as specified for the damaged surface.

**Table 02. System: 200**

| System:200<br>Type: Elastomeric Acrylic<br>Use: Exterior Concrete & Massorry (Previously Painted) | | | | |
|---|---|---|---|---|
| Coat | Minimum Dry Film Thickness (Mils) | Tnemec | Carboline | Induron |
| 1st | 4.0 – 6.0 | Series 156 Enviro-Crete | Flexxide Elastomer | AC 403 |
| 2nd | 4.0 – 6.0 | Series 156 Enviro-Crete | Flexxide Elastomer | AC 403 |
| System | 8.0 – 12.0 | | | |

**Table 03. System: 247 OC**

| System: 247 OC<br>Type: Polyurethane<br>Use: Exterior Ferrous Metal Overcoat | | | | Surface Preparation: SP1, SP2, SP3 | |
|---|---|---|---|---|---|
| | Minimum Dry Film Thickness (Mils) | Tnemec | Carboline | Induron | Sherwin-Williams |
| 1st | Mfr specific | Series 135 (3 mils) | Carbomastic 15/15FC (4-6 mils) | Induramastic 85 (30 -5.0 mils) | Macropoxy 646FC (1.5-2.0 mils) |
| 2nd | Mfr specific | Series 135 (3 mils) | Rustbond Epoxy (1-2 mils) | Induramastic 85 (30 -5.0 mils) | Macropoxy 646FC (2.0-4.0 mils) |
| System | | Series 107 Endura-Shield II | Carboguard 134 HG | Indurethane 6600 Plus | Acrolon 218HS |

**Table 04. System: 247 EP**

| System: 247 EP<br>Type: Epoxy/Polyurethane<br>Use: Exterior Ferrous Metal | | | | Surface Preparation: SP6<br>Surface Profile: 2.0 to 3.0 mils | |
|---|---|---|---|---|---|
| | Minimum Dry Film Thickness (mils) | Tnemec | Carboline | Induron | Sherwin-Williams |
| Prime | 2.0 – 3.5 | N69 Epoxiline II or Series 20 Pota-Pox | Carboguard 890 | Induraguard SG | Macropoxy 646 FC Epoxy |
| Intermediate | 2.0 – 4.0 | N69 Epoxiline II or Series 20 Pota-Pox | Carboguard 890 | Induraguard SG | Macropoxy 646 FC Epoxy |
| Finis | 2.0 – 3.0 | Series 1074U Endura-Shield II | Carboguard 134 HG | Indurethane 6600 Plus | Acrolon 218 HS |
| System | 6.0 – 10.5 | | | | |

**Table 05. System: 247 ZEP**

| System: 247 ZEP<br>Type: Zinc Primer/Epoxy/Polyurethane<br>Use: Exterior Ferrous Metal | | | | Surface Preparation: SP10<br>Surface Profile: 2.0 to 3.0 mils | |
|---|---|---|---|---|---|
| | Minimum Dry Film Thickness (mils) | Tnemec | Carboline | Induron | Sherwin-Williams |
| Prime | 2.0 – 3.5 | Series 94H2O | Carbozinc 859 Organic Zinc | Indurazinc MC 67 | Corothane I GalvaPac Zinc Primer |
| Intermediate | 2.0 – 4.0 | N69 Epoxoline II or Series 20 Pota-Pox | Carboguard 890 | Induraguard SG | Macropoxy 646 FC Epoxy |
| Finish | 2.0 – 3.0 | Series 1074U Endura-Shield II | Carboguard 134 HG | Induraethane 6600 Plus | Acrolon 218 HS |
| System | 6.0 – 10.5 | | | | |

**Table 06. System: 344W**

| System: 344W<br>Type: Epoxy<br>Use: Submerged Ferrous Metal-Potable Water | | | | Surface Preparation: SP10<br>Surface Profile: 2.0 to 3.0 mils | |
|---|---|---|---|---|---|
| Coat | Minimum Dry Film Thickness (mils) | Tnemec | Carboline | Induron | Sherwin-Williams |
| Prime | 2.0 – 3.5 | N140 Pota-Pox Plus or Series 20 Pota-Pox | Carboguard 891HS | PE-70 Epoxy | Macropoxy 646 NSF FC Epoxy |
| Stripe | 3 | N140 Pota-Pox Plus or Series 20 Pota-Pox | Carboguard 891HS | PE-70 Epoxy | Macropoxy 646 NSF FC Epoxy |
| Intermediate | 4.0 – 6.0 | N140 Pota-Pox Plus or Series 20 Pota-Pox | Carboguard 891HS | PE-70 Epoxy | Macropoxy 646 NSF FC Epoxy |
| Finish | 4.0 – 6.0 | S N140 Pota-Pox Plus or Series 20 Pota-Pox | Carboguard 891HS | PE-70 Epoxy | Macropoxy 646 NSF FC Epoxy |
| System | 10.0 – 15.5 | | | | |

**Table 07. System: 344WZ**

| System: 344WZ<br>Type: Zinc Primer/Epoxy<br>Use: Submerged Ferrous Metal-Potable Water | | | | Surface Preparation: SP10<br>Surface Profile: 2.0 to 3.0 mils | |
|---|---|---|---|---|---|
| Coat | Minimum Dry Film Thickness (mils) | Tnemec | Carboline | Induron | Sherwin-Williams |
| Prime | 2.5 – 3.5 | Series 94H2O | | PE-70 Epoxy | Macropoxy 646 NSF FC Epoxy |
| Intermediate | 4.0 – 6.0 | N140 Pota-Pox Plus or Series 20 Pota-Pox | | PE-70 Epoxy | Macropoxy 646 NSF FC Epoxy |
| Finish | 4.0 – 6.0 | N140 Pota-Pox Plus or Series 20 Pota-Pox | | PE-70 Epoxy | Macropoxy 646 NSF FC Epoxy |
| System | 12 | | | PE-70 Epoxy | |

**SECTION 3. REPAIRS AND REPAINTING TANKS**

I. General

A. Submittals

This section describes materials and equipment and requirements for their use in typical repairs, cleaning and repainting the interior and exterior of potable water storage tanks. Furnish all materials and equipment and perform all labor necessary to fulfill the requirements of these Specifications.

B. Submittals

Fabricated items to be used are specified in the attached Materials Schedules. Shop drawings and data sheets must be submitted and approved prior to fabrication or purchase of all items covered by this Article. Where submittals are required, submit four (4) copies of each shop drawing or data sheet.

II. Products

A. Coating Materials

Coating materials and systems shall be as specified in Section 2, Painting. Data sheets must be submitted and approved prior to purchase of any items specified in Section 2, Painting.

B. Clog-Resistant Center Vent

The clog-resistant vent shall provide an area equal to a minimum of that provided by the existing vent for air passage in and out of the tank. The vent shall be screened with stainless steel 16 mesh screen designed for easy removal and replacement. All bolts in the vent assembly shall be stainless steel. The vent shall be removable and shall be equal to the AST vent manufactured by Advance Tank Construction.

C. Roof Edge Vents / Overflows

The roof edge vents/overflows on the pre-stressed concrete tanks shall be screened with stainless steel, 16 mesh screen. All bolts that secure the screen in place shall be stainless steel.

D. Ladders

Ladders shall be fabricated with side bars not less than 3/8-inch thick x 2-1/2-inches wide. Rungs shall be round, not less than ¾-inch in diameter. Clips attaching the ladder to the structure shall be fabricated of 3/8-inch thick x 3-inch with bars and on 10 foot spacing. The ladder shall be fabricated so that rungs penetrate holes in the side rail, with seal welding on both sides of the side rail. The ladders shall be manufactured with a cage and intrusion barrier. The ladder and cage material shall be aluminum. All mounting clips, brackets and attachments shall be seal welded.

E. Safety Climbing Device

1. The safety climbing device shall match the tank's existing safety devices.

2. The safety climbing device shall be suitable for use on straight and curved ladders and shall withstand a minimum drop test of 250 pounds in a six food free fall.

3. The outside shell ladder rail shall extend 42-inches beyond the top of the ladder to allow the climber to have a firm footing on the roof ladder before disengaging the safety climbing device.

F. Water Level indicator

The Contractor shall submit sketches and detail data on the water level indicator for approval by the Owner or Owner's Representative before installation and repairs.

G. Vortex Breaker

Vortex breaker shall consist of a circular 0.25-inch steel plate with a diameter six (6) inches greater than the inlet pipe it is protecting. Vortex breaker shall be held in place with four (4) round bars welded to vortex plate and the inlet pipe. Plate and rods shall be painted with System 344W as specified elsewhere in these Specifications.

H. Baffle Curtain

1. A baffle/curtain material shall be a 45 mil polypropylene liner compound from first quality domestic material specially designed for potable water applications. The liner shall be constructed from two (2) plies of polypropylene sheeting laminated together over one ply of 9 x 8 – 1,000 by 1,300 denier polyester fabric. Polypropylene resin shall comprise greater than 45 percent by weight of the total sheeting formulation. Fabric shall be fully encapsulated by polypropylene at roll edges.

2. Baffle/curtain shall have a 3/8-inch, polypropylene rope in the top, bottom and sides for supporting ballast. The top edge shall have double 2 x 2 x ¼ inch stainless steel angles bolted on each side of the reinforced hem with lift points adequate to permanently suspend the curtain, spaced six (6) feet on center.

3. The baffle/curtain shall be suspended using 5/8-inch 316 stainless steel weg-it eyebolts or 316 embedded anchor cast into the roof, side and bottom slab at six feet on center, supplied and installed by the Contractor.

4. The baffle/curtain shall be attached to the sides and bottom anchorage with a 2 x 2 x ¼ inch angle bolted to the side and bottom at 6"-0" centers. Curtain hem shall be doubled at both sides and bottom connection, bottom hem shall have an additional layer of material.

5. Baffle/curtain shall be NSF61 certified.

6. Baffle curtain shall be equal to Engineered Textile Products, Inc.

I. Access Hatch
Access hatched shall be equal to those manufactured by BILCO (Type S) and shall be of a similar design and size as existing.

J. Interior Piping and Supports

1. Interior piping shall be ductile iron, cement lined with exterior painted as specified elsewhere in these Specifications.

2. Supporting brackets shall be A36 steel designed by the Contractor and approved by the Owner, and painted with System 344W as specified elsewhere in these Specifications.

III. Execution

A. General

1. The Contractor shall schedule the Work such that only one tank is out of service at any given time.

2. All repairs on both the interior and exterior of a tank shall be completed prior to any cleaning and painting of the tank.

3. The Contractor shall furnish all materials and provide all labor necessary to complete the repairs.

4. All welding shall be comply with the requirements of the American Welding Society under the "Code for Arc and Gas Welding in Building Construction". All welding shall be performed by operators qualified by tests prescribed in the "Standard Qualifications Procedure" of the American Welding Society.

B. Structural Repairs

1. After interior cleaning of the steel tank, the tank will be inspected by the Owner or Owner's Representative to determine if any welded seams or pits require welding. If these are located, they will be specifically marked and the welding repair shall be performed by the Contractor.

2. After cleaning the interior of the concrete tank, the tank will be inspected by the Owner or Owner's Representative to determine if any cracking should be repaired. The repair shall be performed by the Contractor at the direction of the Owner or Owner's Representative.

3. Remove existing rusted anchor bolts and replace with new anchor bolts of equal size and quality. All nuts shall be tightened properly to anchor chairs.

4. All loose or cracked grout under the wall shall be removed and replaced. The grout shall be packed under the tank bottom to refusal, but no less than 4-inch inside the bottom ring. Ground mixture shall be one part cement to two parts sand, with a minimum amount of water. The outside edge of the grout shall be finished vertical and in line with the outside edge of the bottom plate.

5. Remove the bolts attached to vent and rebolt the vent to the tank, using all the bolt holes, with new bolts of same size and length as the original bolts.

6. If structural repair work is found to be necessary, the Contractor shall cease work as necessary to allow the Owner sufficient time to arrange for and complete the repair work. Additional payment will not be made to the Contractor for delays required to accomplish structural repair work.

7. No holes shall be drilled into any of the surfaces of the prestressed concrete tank without explicit submittals to the Owner or Owner's Representative to be reviewed as to how such activities may or may not compromise the integrity of the composite structure.

C. Repainting

1. All repainting shall be performed in accordance with AWWA D102, latest revision, where applicable and specified in Section 09 96 29. The Contractor shall be responsible for any and all damage resulting from drifting of abrasive and paint during all construction operations. Care shall be taken that no paint falls on nearby structures, automobiles, etc.

2. Surfaces: All surfaces shall be painted. Painting of the tank shall include ladders, access manholes and all other miscellaneous appurtenances.
3. A period of seven days, minimum, shall elapse after application of the finish coats before the tank is filled.

D. Disinfection

1. Upon completion of all work, the Contractor shall disinfect the tank before placing in service. The Contractor shall furnish all necessary materials, equipment and labor required to accomplish the disinfection. Disinfection shall be done in accordance with the requirements of AWWA C652 "Disinfection of Water Storage Facilities" and the regulations of the state of Florida.

2. Disposal of Chlorinated Water: Reduce chlorine residual of disinfection water to less than one milligram per liter if discharged directly to a body of water or to less than two milligrams per liter if discharged onto the ground prior to disposal. Treat water with sulfur dioxide or other reducing chemicals to reduce chlorine residual. Flush tank and lines until residual is equal to that in the existing water system.

E. Bacteriological Sampling and Testing

1. After the disinfection procedure is completed, and before the storage facility is placed in service, water from the full facility shall be sampled and tested for bacteriological quality in accordance with the regulations of the state of Florida. The testing method used shall be either the multiple–tube fermentation technique or the membrane–filter technique. Samples shall be analyzed by an independent laboratory certified by the state of Florida. Repeat disinfection of the tank until required results are obtained.

2. The water in the full facility should also be tested to assure that no offensive odor exits due to chlorine reactions or excess chlorine residual.

3. If the test for coliform organisms is negative, then the storage facility may be placed in service following approval from the Owner or Owner's Representive. If the test shows the presence of coliform bacteria, the situation shall be evaluated by the Owner or Owner's Representative. Repeat samples shall be taken until two consecutive samples are negative, or the storage facility shall again be subjected to disinfection.

F. Record Compliance

The record of compliance shall be the bacteriological test results certifying that the water held in the facility is free from bacteria contamination.

G. Clean-up

Before the Project is considered complete, all rubbish and unused material due to or connected with the construction must be removed from the premises and disposed of in a manner satisfactory to the Owner. All private or public property disturbed or damaged shall be restored to former condition and final payment withheld until such work is finished.

**SECTION 4. TANK CLEANING, AND REPORTING**

I. General

A. Scope

The work under this Section includes the cleaning for each tank designated by the Owner.

B. Submittals

1. Submit one copy of a schedule for the cleaning of the tanks, including the duration of the cleaning.

2. Submit the Bacteriological Monitory Reports as detailed elsewhere in this section of the Specifications.

3. All still photographs shall be in color and in "jpg" format.

4. All required audio-video recordings shall be in color and viewable in Microsoft Windows Media Player or Apple Quick Time Player.

5. An electronic files shall be submitted on a flash drive or a DVD (minus R format) as indicated herein.

II. Products

A. Divers and Equipment

1. Each diver shall be a certified commercial diver in good standing with the Association of Diving Contractors International (ADCI).

2. Diving supervisor shall be a certified commercial diving supervisor in good standing with ADCI.

3. All equipment shall be dedicated for potable water use only.

4. The divers shall use dry-suits dedicated to potable water use made of a material suitable for disinfection such as vulcanized rubber.

5. Divers shall use dry commercial diving hard hats.

6. Full-time, reliable voice communication between the surface and the diver shall be used.

III. Execution

A. General

1. General Safety

1.1. The Contractor is responsible for the safety of all workers and subcontractors and suppliers performing work on this project.
1.2. The Contractor shall protect the Owner, their agents, and the general public from harm attributable to Contractor's performance, or non-performance, of the work on this Project. The protection shall include, but not be limited to, providing the necessary safety equipment and instructions for its use by the Owner, and their agents.
1.3. The Contractor shall protect the existing structures and environment from damage attributable to the Contractor's performance, or non-performance, of the work on this Project.
1.4. The Contractor shall comply with the applicable standards of 29 CFR Part 1910 and 29 CFR Part 1926.
1.5. The listing of potential hazards shall in no way relieve the Contractor's responsibility for safety on this Project.
1.6. The interior of these tanks shall be considered a confined space hazard. The Contractor shall confirm to the Owner, in writing, prior to start of the Project that the Contractor has training programs, trained personnel, and is otherwise in compliance with CFR 19 10.146.

2. Diving Safety

2.1. Diving operations shall be performed in accordance with:
2.1.1.OSHA, 29 CFR, 1910 Subpart T – Commercial Diving Operations
2.1.2.ADCI, Consensus Standards for Commercial Diving Operations and Underwater Operations
2.2. When diving is performed, a minimum 3-man dive team according to OSHA regulation shall perform the work.

3. Contractor shall obtain a hydrant construction meter to measure and record the water used for cleaning. There will be no cost charged by the Owner to the Contractor for water used in cleaning and disinfecting the tanks.

B. Disinfection

1. When divers are used to clean the tank interior, such shall be disinfected prior to entering the tank. Evidence of such disinfection procedure shall be captured on an audio-video recording.

2. Following any tank cleaning in the dry, or if the water quality has been compromised, upon completion of all work, the Contractor shall disinfect the tank before placing in service. The Contractor shall furnish all the necessary materials, equipment and labor required to accomplish the disinfection. Disinfection shall be performed in accordance with the requirements of AWWA C652 "Disinfection of Water Storage Facilities" and the regulations of the state of Florida.

3. Disposal of Chlorinated Water: Reduce chlorine residual of disinfection water to less than one milligram per liter if discharged onto the ground prior disposal. Treat water with sulfur dioxide or other reducing chemicals to reduce chlorine residual. Flush tank and lines until residual is equal to that in the existing water system.

C. Tank Repair Reports

1. The Contractor shall prepare a report which presents in tabular and narrative form documentation of all work completed by the contractor for the items in the following paragraphs. Each tank shall be addressed separately.
2. The Report shall include the following general information for each tank:

    2.1. Location and address of tank
    2.2. Name of tank erectors
    2.3. Date of erection
    2.4. Type of tank
    2.5. Tank capacity
    2.6. Tank diameter
    2.7. Overflow elevation
    2.8. Bottom elevation
    2.9. Number of columns, if applicable
    2.10. Date of last Cleaning

3. The report shall include the following coating information for each tank:

    3.1. Date of last recoating – interior and exterior
    3.2. Coating materials used in last recoating – interior and exterior
    3.3. Coating method used on previous coating (overcoat versus blast and recoat)

4. The report shall include photographic and audio-visual documentation of the following:

    4.1. Photographs of all items noted in Paragraph C of this Section
    4.2. Tank Exterior
        4.2.1. Provide a clear, narrated audio-video recording of the Pre and Post to repair tank conditions
        4.2.2. Provide photographs of repaired areas
    4.3. Interior repairs by Divers (If applicable)
        4.3.1. Provide a clear narrated audio-video recording depicting diver disinfection and the condition of the pre and post condition of tank including all repairs.
        4.3.2. Provide photographs of repaired areas
5. Four printed, bound copies of each report shall be provided, with required photographs printed in the report with a caption identifying what is depicted in each photographs. Required audio/video recordings shall be included on a DVD (minus R format) and included in a pocket in each report. One electronic version of each report shall also be provided on a flash drive, including the required audio/video recordings.

D. Tank Cleaning

1. Prior to cleaning, gather four samples of the sediment from the bottom for the Owner.

2. The interior of tanks designated to be cleaned in the dry shall be cleaned in the "dry" (tank drained to no more than two inches of standing water) shall be performed by pressure washing the floor and walls to remove all visible sediment. The contractor shall assume that the Owner will drain the tanks to no more than five feet of standing water, and that the Contractor shall be required to perform the balance of the draining of the tanks.

3. The interior of the tanks designated to be cleaned in the wet shall be cleaned by the use of divers with an underwater vacuum system and brushes to remove sediment and bio-growths.

4. The exterior of tanks shall be pressure washed cleaned to remove all bio-growths, mold, mildew and all other deleterious substances.

5. The sediment and cleaning water shall be disposed of in one of the following manners:

    5.1. At the local wastewater treatment facility or other permitted disposal facility;
    5.2. Directly into sanitary sewer system, provided the discharge rate is less than 200 GPM; or
    5.3. Directly into storm sewer system, provide
        5.3.1. The discharge rate is less than 200 GPM, and

5.3.2. Provided that the grit is removed prior to discharge by use or a sedimentation chamber or other acceptable means.

6. Provide photographic and audio-video documentation of tank interior and exterior before and after cleaning.

WEST PALM BEACH

## SECTION 2 – CONTRACT TERMS / SPECIAL PROCUREMENT TERMS

2.1 3.1 **Pre-Bid Conference**. If scheduled, a pre-bid conference will provide potential bidders the opportunity to ask questions and receive clarification concerning the Project and to emphasize safety factors, hazards, or potential interference of other projects. If a pre-bid conference is scheduled, attendance is strongly encouraged. If a site inspection is scheduled it will be the only opportunity to inspect the Project site and attendance is recommended as no individual appointments will be made.

Date: March 5, 2019
Time: 10:00 AM
Place: Water Treatment Plant (West Entrance) 700 N. Australian Avenue, West Palm Beach, FL 33401

Please bring your copy of the Invitation to Bid to the pre-bid conference.

In accordance with the Americans with Disabilities Act, any person who believes he or she has a disability requiring the use of a special accommodation at either the scheduled site inspection, pre-bid conference or bid opening should contact the Procurement Department at 561-822-2100, at least five (5) days prior to the event to advise of his/her special requirements.

2.2 **Licenses / Certifications / Receipts**. The Bidder will be required to have at the time of bid submittal, the following current license(s)/certification(s):

- General Contractor's License
- American Petroleum Institute (API) Certification for Steel Tanks and Hydropneumatic Tanks

2.3 **Business Tax**. The Bidder will also be required, at the time of contract execution, to have a business tax receipt or certificate of registration. See Section 4.24 for additional information.

2.4 **Equal Benefits Ordinance**. Section 66-9 of the City's Code of Ordinances provides that, with limited exceptions, when contracting for goods, services or construction in an amount of $50,000 or more, with persons or businesses with five or more employees that also provide benefits to employees' spouses and dependents, the City shall contract only with those persons or businesses that provide equal benefits to employees' domestic partners. Each bidder shall submit an Equal Benefits certification with its Bid.

2.5 **Insurance**. Contractor(s) shall purchase from and maintain during the term of the Services, and all applicable statutes of limitation periods, the following insurance:

(a) **Comprehensive General Liability** insurance in an amount not less than $1,000,000.00 Combined Single Limit per each occurrence and $2,000,000 aggregate, with bodily injury limits, which may not be subject to a self-insured retention or deductible exceeding $25,000.

(b) **Worker's Compensation and Employer's Liability Insurance** with limits of Employer's Liability Insurance not less than $500,000 "each accident," $500,000 "disease policy limit," and $500,000 "disease each employee".

(c) **Automobile Liability**: Not less than $1,000,000.00 for injuries per person in any one accident or occurrence and $1,000,000.00 in the aggregate for injuries per occurrence or accident, with $100,000.00 for property damage in any one accident or occurrence. May not be subject to a self-insured retention or deductible exceeding $10,000.

Self-insurance shall not be acceptable. All insurance policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Palm Beach County, Florida, and (c) have a best's rating of A- VI or better.

**Additional Insured**: All liability insurance policies shall name and endorse the following as additional insured(s): the City of West Palm Beach and its commissioners, officers, employees and agents.

**Certificate of Insurance**: Contractor(s) shall provide the City Risk Manager with a copy of the Certificate of Insurance and endorsements evidencing the types of Insurance and coverage required prior to the commencement of Services. It is the Contractor's responsibility to ensure that the City's Risk Manager and the Department both have a current Insurance Certificate and endorsements at all times.

If Contractor's insurance policy is a claims made policy, Contractor(s) shall maintain such insurance coverage for a period of five (5) years after the expiration or termination of this Agreement. Applicable coverage may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.

The provisions of this section shall survive beyond the expiration or termination of this Agreement.

2.6 **Small Business Participation**. In accordance with the Small Business Ordinance, the goal for Small Business participation under the contract resulting from this Invitation to Bid is:

**0%** of the total contract value.

2.7 **Services Provided in Response to Natural Disaster / Emergency.**

Contractor provides services that the City may require in the event of a hurricane or other disaster. Contractor acknowledges and agrees that in such event, the City may apply to the State of Florida or the federal government for funds which will be used to pay Contractor or reimburse the City for payments made to Supplier. FEMA will only consider reimbursing contracts which contain the requisite FEMA provisions. Contractor desires to be eligible to be awarded disaster work and be compensated through federal funds. The City and Contractor agree that with respect to any services or work performed or provided by Contractor or its subcontractors under the Agreement arising or related to a disaster event, the provisions set forth in Exhibit A (the "FEMA Requirements") shall apply. The FEMA Requirements shall only modify the Agreement upon the provision by Contractor of work or services required as a result of a disaster. The terms and conditions of the Agreement and the FEMA Requirements should be read to operate in concert, except where directly in conflict. In the event of a conflict between the terms of the Agreement and the FEMA Requirements, the FEMA Requirements shall govern and prevail.

2.8 **Other Special Terms**:

a. Work Schedule and Locations:
   - Contractors will provide services on an as-needed basis in accordance with work schedules provided in each Work Order.
   - Contractors may be required to work at various City-owned facilities and locations

b. Work Orders
   - Time of Completion for the work authorized under each work order shall be provided in the Work Order.
   - The City shall issue individual work orders from time to time on an "as-needed" basis for each assignment. The services to be provided under each assignment shall commence and be completed by the dates indicated in each work order. All terms and conditions of the Invitation to Bid and Contract will be applicable to and incorporated in each work order. The individual orders will specify the work to be performed, its location, the not-to-exceed cost (based on the contract unit price and a schedule for completion.
   - The City does not guarantee any minimum amount of work, or the extent of the services required.
   - All work shall be in accordance with the technical specifications set forth herein. The City reserves the right to utilize developed specifications for the work.

c. Contract Term
   - The Contractor shall be awarded a contract for thirty-six (36) months. The contract may be renewed for up an additional two (2) year term. Options to renew will only be effective upon a written contract amendment executed by both parties. Renewal terms and conditions will be the same as the base

contract. The Contract shall commence on the date when the contract is executed by the City. Any renewals will be subject to the appropriation of funds by the City.

d. Contractor shall comply with all federal, state, and local regulations.

e. Method of Ordering Work
**Direct Orders**. The Contractor(s) will be authorized to perform work directly using a purchase order for Work requested under $10,000. Direct Orders may be issued by a Department Director or Utilities Director. All such work shall be performed and invoiced pursuant to the terms of the Contract and all terms and conditions of this ITB. Upon completion of each work task, the Contractor will submit an individual invoice of said task indicating the date work was performed, the description of the person performing the work, the hourly rates charged, equipment provided, rate charged for equipment, materials or supplies, in accordance with the Contract terms and provisions.

**Work Orders**. The City may issue a Work Order for specific Work which may require a detailed scope of work, specific completion dates or schedules, the "not to exceed" price, a performance/payment bond if required, or other special terms deemed necessary for the task. Such Work Orders will be in a form similar to the Work Order sample included in this ITB. All terms and conditions of the Contract Documents will be applicable to each Work Order. Upon completion of each Work Order task, the Contractor will submit an individual invoice for each Work Order along with a copy of the related Work Order, and all other forms required by the Contract Documents.

f. Permits. Contractor shall obtain all permits and licenses required by law or ordinance and shall maintain the same in full force and effect. All permits and licenses shall be obtained at the Contractor's expense. Any changes of the licenses, permits, or certification shall be reported to the City within thirty (30) days.

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## SECTION 3 – BID EVALUATION

3.1 **Minimum Qualification**. To be evaluated for award, Bidders must meet the following minimum qualifications:

1. Bid. The Bid shall be timely received.
2. Signatures. The Bid (Form B2) and all documents requiring signature are included and have been signed by an appropriate officer.
3. License. Bidder shall be properly licensed / registered to perform work in the State of Florida, Palm Beach County, and the City of West Palm Beach.
4. Small Business Goal. The bid includes a commitment to meet or exceed the established small business goal for the Project.
5. Convicted Vendor List. Bidder has not been placed on the Convicted Vendor List kept by the Florida Department of Management Services, within 36 months of bid submittal.
6. Discriminatory Vendor List. Bidder has not been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.
7. Scrutinized Company. For bids of any amount, Bidder is not on the Scrutinized Companies that Boycott Israel List or is not engaged in a boycott of Israel. For bids over $1 million, Bidder is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business activities in Syria or Cuba.
8. Minimum Experience. Contractor must have completed a minimum of three (3) water storage tank cleaning and/or repair projects. Projects provided to evidence experience requirement must have been completed on time and within budget.

3.2 **Evaluation Factors**. Bids will be evaluated based on the following evaluation factors, in addition to those factors established in the City's Procurement Code, in determining the best value to the City. Price alone is not the determination of best value to the City.

1. Contractor firm experience and reference responses. Skill, workmanship, and experience demonstrated by the Bidder, and its subcontractor(s), in performing the same type of work or services as those sought by the City.
2. Firm capacity in terms of personnel, equipment and workload.
3. Contractor personnel.
4. Firm capacity in terms of financial viability and ability to provide required insurance and business tax receipts.
5. Past performance of Bidder on City Projects or work.
6. Ability to meet the requirements of the solicitation.
7. Adherence to specifications and requirements.
8. Prices, costs or rates set forth in the schedule of bid prices.
9. Evidence of ability to work efficiently and cooperatively with City staff;
10. Small business participation.
11. Compliance with the equal opportunity provisions of the procurement code.
12. Compliance with the equal benefits provisions of the procurement code.

13. Impact to local economy in comparison to other bidders.

14. Any suspension or debarment by any government entity; Any prior conviction for bribery, theft, forgery, embezzlement, honest services fraud, falsification or destruction of records, or other offense indicating a lack of business integrity or honesty; any prior violation of State, City or County ethical standards. Suspension or debarment by the City or another government entity.

15. Consideration of any other factors or requirements specific to the ITB.

16. Such other information as may be obtained by the City.

WEST PALM BEACH

# SECTION 4 – INSTRUCTIONS TO BIDDERS

*To ensure acceptance of your bid, Bidders must comply with the following instructions:*

4.1 **INQUIRIES**. Any and all inquiries regarding this ITB or the project must be directed in writing, by US mail, fax or email to:

City of West Palm Beach
Purchasing Department – 3rd Floor
401 Clematis Street
West Palm Beach, FL 33401

Fax: (561) 822-1564

Purchasing Agent: Nate Rubel
E-mail: nrubel@wpb.org

Inquiries regarding the Small Business Program may be directed to:

Aisha Darrough-Slade
(561) 822-2100
Email: ADarrough@wpb.org

**Inquiry Deadline**. Any and all inquiries regarding this ITB or the Project (other than the Small Business Program) must be directed in writing, by US mail, fax or email to the purchasing agent indicated in this ITB. All questions or inquiries must be received no later than **ten (10) calendar days prior** to the Bid Submittal Deadline.

No interpretation of the Invitation to Bid will be made for any Bidder, except by written addendum. No Bidder may rely upon any oral or verbal modification or interpretation in preparing its Bid. Only written addenda will be legally binding.

4.2 **NO LOBBYING**. Bidder and its representatives are prohibited from contacting or lobbying the Mayor, any City Commissioner, City officers and employees, or any consultant or other person related or involved with this Invitation to Bid or the Project, other than an employee of the Procurement Department. Bidder's representatives shall include, but not be limited to, the Bidder's employees, partners, officers, directors, consultants, lobbyist, attorney or any actual or potential subcontractors or consultants of the Bidder. Contact with the Procurement Department may be for clarifications only. Any violation of this condition may result in rejection and/or disqualification of the Bidder.

The "No Lobbying" condition is in effect from the date of publication of the ITB and shall terminate at the time the City approves execution or executes the contract, rejects all bids, or otherwise takes action which ends the solicitation process.

4.3 **ITB DOCUMENTS**. This Invitation to Bid consists of this document along with all plans, drawings and/or technical specifications related to this procurement, all of which are incorporated herein by this reference. It is the responsibility of the Bidder to ensure that all pages are included. All Bidders are advised to closely examine this package. Submission of a Bid implies a full understanding of the Invitation to Bid,the drawings and specifications, any special terms, and the Work. Failure to read, examine and understand the solicitation will not excuse any failure to comply with the requirements of the solicitation or any resulting contract, nor shall such failure by a basis for claiming additional compensation.
If a Bidder suspects an error, omission or discrepancy in this solicitation, the Bidder must immediately, and in any case not later than ten (10) calendar days in advance of the Bid Submittal Deadline, notify the procurement agent identified above.

4.4 **BIDDER'S RESPONSIBILITY**. It is the responsibility of each Bidder, before submitting a Bid, to:

a. Examine the Invitation to Bid and ITB Documents thoroughly;
b. Take into account federal, state and local laws and regulations that may affect costs, progress, performance, furnishing the Work or contract award;
c. Carefully correlate Bidder's observations with the ITB Documents;
d. Carefully review the ITB Documents and notify the Procurement agent of any conflicts, errors, or discrepancies in the ITB Documents of which Bidder knows or reasonably should have known.
e. Verify whether any addenda have been issued and obtain same.

Any failure by Bidder to take these steps will not relieve the Bidder from the responsibility for estimating properly the difficulty and cost of successfully performing the work without additional expense to City.

Bidder shall check all specifications and drawings furnished with the ITB and shall, prior to the Inquiry Deadline, notify WPB Procurement, in writing, of any illegibility, error, omission, defect, conflict, ambiguity or discrepancy discovered in such specifications and drawings and shall comment as appropriate upon construction feasibility and practicality. .

The submission of a Bid shall constitute an incontrovertible representation by Bidder that the Bidder has complied with the above requirements and that without exception, the Bid is premised upon performing the furnishing the work required by the Contract Documents and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all term and conditions for performance and furnishing the work.

4.5 **ADDENDA.** Any addenda or other modification to the Bid documents will be issued by the City prior to the date and time of Bid Submittal Deadline, as a written addenda distributed to all prospective bidders who have obtained the Bid package directly from City or its authorized representative. Such written addenda or modification shall be part of the Bid documents and shall be binding upon each Bidder. Each Bidder is responsible for obtaining, reviewing and executing each addendum and submitting each addendum with its Bid. Each Bidder is required to acknowledge receipt of any and all addenda in writing and submit with their Bid. **Bidders are cautioned to check the Procurement web page at www.wpb.org for addenda prior to submitting their Bid**. The City shall not be responsible if a Bidder fails to receive any addendum issued. No Bidder may rely upon any oral or verbal modification or interpretation in preparing its Bid. No interpretation of the Invitation to Bid will be made for any Bidder, except by written addendum.

4.6 **FORM OF BID**. Unless otherwise instructed, **all Bids must be submitted on the provided Bid forms.** An original and the designated number of copies of each Bid are required. The City may require an electronic copy and/or electronic spreadsheet of the bid prices. A complete Bid package, and all other required documents must be submitted in order for the Bid to be considered.

4.7 **USE OF CITY LOGOS, TRADEMARKS OR SEALS**. Bidder shall not duplicate or utilize the City's logo, trademarks or seals in its Bid package or any other documents or materials without prior specific City authorization.

4.8 **BID SUBMITTAL**.

a. **One (1) original, one (1) electronic version and two (2) copies** of the Bid must be submitted in a sealed envelope, marked on the outside lower left-hand corner of the envelope with the firm name, Bid number, project title, and Bid submittal deadline. Bids submitted by telephone, facsimile or email shall not be accepted. Bids shall be mailed or hand-delivered to:

City of West Palm Beach
Procurement Department – 3rd floor
401 Clematis Street
West Palm Beach, FL 33401

b. Time is of the essence and any Bid received after the Bid Submittal Deadline will be returned unopened and will not be considered. The Bidder assumes responsibility for having the Bid delivered on time at the place specified. Bidders are cautioned to allow adequate time for security screening at the delivery site. A valid photo ID may be required for personal delivery. The time of receipt shall be determined by the time clock located in the Procurement Department. Bidders are responsible for insuring that their Bid is stamped by the City Procurement Department personnel by the Bid Submittal Deadline. The Procurement Department shall in no way be responsible for delays or late receipt caused by any occurrence or any third party courier.

c. **All Bids must be submitted on the provided Bid forms**. Bids submitted on Bidder Letterhead or quotation forms will not be accepted.

d. All Bids must be typed or written in ink, and must be signed in ink by an officer or employee having authority to bind the company or firm. Failure to submit a duly signed bid shall be cause for rejection of the bid. Please sign in blue ink. Signatures must be original. Electronic signatures are not accepted.

e. **Mandatory**: All Bids must include the **Schedule of Bid Prices** in **both** a signed **paper** format and an **electronic spreadsheet** format (provided with ITB package). **Failure to submit an electronic spreadsheet format of the bid tabulation shall be cause for rejection of the Bid.**

****IMPORTANT***: The electronic Schedule of Bid Prices shall be submitted with the original paper Bid package by means of a compact disk, flash drive or other digital data storage device. The paper Schedule of Bid Prices and the electronic version shall be materially consistent and contain the same information. In case of a discrepancy, the signed paper Schedule of Bid Prices shall prevail.

**AVOID BID REJECTION*:***

Bids may be rejected for noncompliance to requirements after review by the Procurement Official.

- All Bids must be submitted on the provided Bid forms.
- Forms B2 and B3 must be signed in blue ink by an officer authorized to bind the Bidder.
- All Forms must be fully completed.
- Electronic spreadsheet bid tabulation must accompany the Bid.

4.9 ERRORS / CORRECTIONS. Bids having corrections must be initialed in ink by the Bidder. If a correction is necessary, draw a single line through the entered figure and enter the corrected figure above it and initial the correction. Do not erase or "white out" errors. Any illegible entries, pencil bids or corrections not initialed will not be accepted. In the event of mathematical extension error(s), the unit price will prevail and the Bidder's total offer will be corrected accordingly. In the event of addition errors, the extended line item will prevail and the Bidder's total will be corrected accordingly. Bidders shall not be allowed to modify their Bids. Bid containing substantial errors may be withdrawn provided request to withdraw is made prior to the bid opening time and date.

4.10 **BID PRICES**. All Bid prices shall remain valid for not less than ninety (90) days after the Bid Submittal Deadline or other time stated in this ITB. Prices must be stated in the units specified on the Schedule of Bid Prices Form.

4.11 **NON-COLLUSION**. By submittal of a Bid, Bidder certifies that its bid is made independently and free from collusion. Failure of a Bidder to disclose any relationship required by law or ethics provisions shall be reason for debarment by the City. Affidavit of Prime Bidder re Non-collusion (**Form B8**) must be included with the Bid.

4.12 **DRUG-FREE WORKPLACE**. The City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City. Bidder shall be required to enforce a drug-free workplace for all Bidder personnel working under the contract. Specifically, all Bidder personnel who are working under the City's contract must be notified in writing by Bidder that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. Bidder agrees to prohibit the use of intoxicating substances by all Bidder personnel and will ensure the Bidder personnel do not use or possess illegal drugs while in the course of performing their duties. Drug Free Certification (**Form B9**) must be included with the Bid.

4.13 **EQUAL BENEFITS ORDINANCE**. Section 66-9 of the City Code of Ordinances provides that, with limited exceptions, when contracting for goods, services or construction in an amount of $50,000 or more, with persons or businesses with five or more employees that also provide benefits to employees' spouses and dependents, the City shall contract only with those persons or businesses that provide equal benefits to employees' domestic partners. Each Bidder shall submit an Equal Benefits certification with its Bid (**Form B17**).

4.14 **CONVICTED VENDOR LIST**. Pursuant to Fla. Stat. Sec. 287.133, a person or affiliate who has been placed on the Convicted Vendor List maintained by the State of Florida may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may

not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

4.15 **DISCRIMINATORY VENDOR LIST**. In accordance with Fla. Stat. Sec. 287.134, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

4.16 **SCRUTINIZED COMPANIES LISTS**. Pursuant to Fla. Stat. Sec. 287.135, Contractor represents that Contractor is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Additionally, if the Contract Price is One Million Dollars ($1,000,000) or more, Contractor represents that neither the Contractor nor its principals or owners are listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities. (**Form B18**).

4.17 **FEDERAL LABOR / EMPLOYMENT LAWS**. In accordance with Fla. Stat. Sec. 255.20, any contractor may be considered ineligible to bid by the City if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

4.18 **SPECIFICATIONS.** Technical specifications define the minimum acceptable standard. When the specification calls for "Brand Name or Equal," the brand name product is acceptable. Alternates will be considered upon demonstrating the other product meets stated specifications and is equivalent to the brand product in terms of quality, performance and desired characteristics. Minor differences that do not affect the suitability of the supply or service for the City's needs may be accepted. Burden of proof that the product meets the minimum standards or is equal to the brand name, product, is on the Bidder. The City reserves the right to reject bids that the City deems unacceptable.

4.19 **CONFLICT OF INTEREST.** Bidders must disclose with its Bid the name of any officer, director, or agent of Bidder who is also an employee of the City of West Palm Beach. Further, all Bidders must disclose the name of any City of West Palm Beach employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Bidder's firm or any of its affiliates.

4.20 **MODIFICATION / WITHDRAWAL**. Bidders shall not be allowed to modify their Bids. Bid containing substantial errors may be withdrawn provided request to withdraw is made prior to the bid opening time and date. Written requests to withdraw a Bid must be addressed and labeled in the same manner as the Bid and marked as "Withdrawal". Requests for withdrawal after the bid opening may result in forfeiture of the bid bond or security.

4.21 **BID OPENING**. Bids shall be opened by Procurement Department staff at the time indicated in this ITB. At such public meeting, the name of the Bidder and the total Bid amount shall be announced. The City reserves the right to postpone the date for receipt and opening of bids and will make a reasonable effort to provide prior notice of such postponement.

4.22 **COST JUSTIFICATION**. In the event only one response is received, the City may require that the Bidder submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the bid price is fair and reasonable.

4.23 **DUN & BRADSTREET REPORT**. The City may review the Bidder's rating and payment performance to assist in determining a Bidder's financial responsibility and financial viability when being evaluated for a contract award.

4.24 **BUSINESS TAX.** The Bidder will also be required, at the time of contract execution, to have a business tax receipt or certificate of registration in accordance with the following:

- No person, contractor or subcontractor may conduct business within the City without a business tax receipt or certificate of registration.
- A contractor who holds a valid countywide contractor's license, in addition to a county business tax receipt, shall register with the City.
- Any person engaging in any business, occupation or profession within the City without a permanent business location or branch office in the City, but holding a valid and currently effective business tax receipt issued by the county or another incorporated municipality, shall be issued a certificate of registration upon registering with the business tax official.

4.25 **CONTRACT AWARD**. The selection of a Bidder shall be based on the best value to the City. Best value means the overall value to the City in the City's sole discretion, as determined by considering the evaluation factors and selection criteria set out in this ITB and the factors in Sec. 66-71 of the City Code (Procurement Code). The decision of the City shall be final. The selected Bidder(s) will be notified in writing of the City's intent to award a contract and notice of the intended award will be posted to the Procurement web page. Award of a contract cannot be assigned by Bidder.

4.26 **CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE**. When considering two or more qualified bids, and at least one of which is from a certified service-disabled veteran business enterprise, as defined in Fla. Stat. Sec. 295.187, and such bid is equal with respect to all relevant considerations, including price, quality and service, such contract shall be awarded to the certified service-disabled veteran business enterprise.

4.27 **STATE-APPROPRIATED FUNDS**. If 50 percent (50%) or more of the contract will be paid from state-appropriated funds which have been appropriated at the time of competitive selection, selection will not be based on any preference for maintaining an office or place of business within the City, or hiring employees or subcontractors from within the City, or Bidder's prior payment of local taxes, fees or assessments.

4.28 **CONTRACT**. Bidder must be prepared for the City to accept the Bid as submitted. **Within 10 days of receipt, the awarded Bidder shall execute the Contract and provide the City with the certificate(s) of insurance for the contract**. Inability to timely meet this requirement may result in delays that will deem the Bidder to not be in the best interest of the City, and the City may withdraw the contract and provide a notice of intent to award to another bidder. The City and Bidder will be contractually bound only if and when a written contract between the parties is executed by the appropriately authorized City officials and Contractor officers. In the event a contract is not executed with the selected Bidder, the City reserves the right to retain the bid security and to select the next "best value" bidder and to contract with said bidder.

4.29 **COSTS.** All costs incurred by any Bidder in responding to this Invitation to Bid are the sole responsibility of the Bidder.

4.30 **PROTEST PROCEDURE.** Protest procedures are provided in Section 66-151 of the City Code of Ordinances. A protest must be addressed to the Procurement Official, in writing, identifying the protester, the solicitation and the basis for the protest and must be received by the Procurement Official within seven (7) calendar days of the first date that the aggrieved person knew or should have known of the facts giving rise to the protest, but no later than seven (7) calendar days after the issuance of a Notice of Intent to Award. The protest shall be considered filed when it is received by the Procurement Official. Protests shall be accompanied by the required bond or security. Failure to file a protest in accordance with the requirements of the Procurement Ordinance shall constitute a waiver of said protest.

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WEST PALM BEACH

## SECTION 5 – STANDARD TERMS

The following terms shall govern this ITB and the resulting Contract:

5.1 **City is Document Gatekeeper**. This ITB is issued directly by the City of West Palm Beach and City shall be the sole distributor of all addenda and/or revisions to these documents. It is the responsibility of the Bidder to confirm the legitimacy of procurement opportunities or notices directly with the Purchasing Department. City is not responsible for any solicitations advertised by subscriptions, publications, websites (other than City's) or other sources not connected with City and the Bidder should not rely on such sources for information regarding any solicitation made by City.

5.2 **Official Solicitation Document**. Changes to the ITB made by a Bidder may not be acknowledged or accepted by City. Award or acceptance of a contract does not constitute acceptance of a changed term, condition or specification, unless specifically acknowledged and agreed to by City. The copy of the ITB published and maintained by City shall be the official solicitation document.

5.3 **Copying of Bids**. Bidder grants to City permission to copy all parts of its Bid, including without limitation any documents and/or materials copyrighted by the Bidder. The City's right to copy shall be for internal use in evaluating the Bid.

5.4 **Public Records**. City is governed by the Sunshine law and the Public Records law of the State of Florida.

A. Bid Documents. Bid packages shall become the property of City and shall not be returned. Bid documents received by the City are exempt from public disclosure until such time as the City provides notice of intent to award or until 30 days after bid opening, whichever is earlier. If the City rejects all bids and intends to reissue the ITB, then the rejected bids remain exempt from public disclosure until such time as the City provides notice of intent to award, or until the City withdraws the reissued ITB. A bid shall not be exempt from public disclosure longer than 12 months after the initial City notice rejecting all bids.

B. Exemption from Disclosure. Bidders must claim the applicable exemptions to disclosure of information provided in their Bid package by identifying the materials to be protected, and must identify the applicable legal authority for the exemption under state statutes. Such information must be identified accordingly on each and every page of the Bid package where applicable. No claim of confidentiality or proprietary information in all or any portion of a Bid package will be honored unless a specific exemption from the public records law exists and it is cited in the Bid package. If a Bidder believes any of the information contained in its Bid package is exempt from the public records law, the Bidder must specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption; otherwise, the City will treat all material received as public records. City reserves the right to make any final determination of the applicability of the Public Records Laws.

C. City Documents and Records. Contractor shall comply with Chapter 119, Florida Statutes, regarding public records. Contractor shall keep and maintain all documents, records, correspondence, computer files, emails, and/or reports prepared in order to perform the work under this Contract. A request to inspect or copy public records relating to this Contract must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor shall provide the records to the City or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the City, upon request, in a format that is compatible with the information technology systems of the City. Upon completion of the contract, Contractor shall transfer, at no cost, to the City all public records in possession of Contractor. The Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records disclosure requirements may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by Contractor, except as authorized by law and specifically authorized by City. Failure of the Contractor to provide public records to the City within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of the Contract by the City, in addition to any other remedies available under the Contract or by law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY CLERK, WHO IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AT:

Office of the City Clerk
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401
561-822-1210
CityClerk@wpb.org

D. Exemption. Records that are exempt or confidential are exempt from public records disclosure requirements. Exempt records may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by Bidder, except as authorized by law and specifically authorized by City. Bidder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

5.5 **Right to Audit**. The City shall have the right to audit Bidder's books and records, at the City's expense, upon prior notice, with regard to the work under the contract. Bidder shall allow the City or its representative to interview all current or former employees to discuss matters pertinent to the Contract. If an audit inspection discloses overpricing or overcharges (of any nature) by Bidder to the City in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the City's Internal Audit department shall be reimbursed to the City by the Bidder and (2) a 15% penalty of the overpricing or overcharges shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Bidder within 45 days from presentation of City's findings to Bidder.

5.6 **Records Maintenance**. The Bidder awarded the contract under this ITB shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least ten (10) years after final payment, or the final resolution of any related litigation. City shall have access to all records, documents, and information collected and/or maintained by Contractor and its subcontractors, material men and suppliers in the course of the contract. If records are unavailable locally, it shall be Bidder's responsibility to insure that all required records are provided to City at Bidder's expense.

5.7 **Commencement of Work**. If a Bidder begins any billable work prior to the City's final approval and execution of the contract, Bidder does so at its own risk.

5.8 **Background Check.** The City may conduct criminal, driver history, and all other background checks of Bidder personnel who would perform work under the contract or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent or other Bidder personnel that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

5.9 **Use of City Name; Logos or Seal.** Contractor will not use the name of the City of West Palm Beach in any advertising or publicity without obtaining the prior written consent of the City. Contractor will not use the City logos or seals in any document or report without the prior written consent of the City.

5.10 **News Releases / Publicity**. News releases, publicity releases, or advertisements relating to this ITB or resulting contract or work authorizations shall not be made without prior City approval.

5.11 **Independent Contractor**. It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees or subcontractors, not City employees. Accordingly, Contractor and Contractor's employees or subcontractors are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.

5.12 **Termination for Non-Appropriation.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under the awarded contract, the City will have the right to terminate the contract, without penalty, on the last day of the fiscal period for which funds were legally available.

5.13 **Ethics Requirements**. All Bidders and the awarded Contractor shall comply with the ethics requirements of the City Code and the Palm Beach County Ethics Code. No Bidder may employ, directly or indirectly, the mayor any member of the City Commission or any director or department head of the City. The City Code prohibits any employee of member of their immediate family or close personal relation to receive a benefit or profit from any contract entered into with the City, either directly or through any firm of which they are a member, or any corporation of which they are a stockholder of an interest of 10% or more, or any business entity in which they have a significant or controlling financial interest. The City will not accept gifts, gratuities or products from Bidders and affiliates or agents.

5.14 **Lobbying Certification**. Bidder certifies to the best of its knowledge and belief that no funds or other resources received from the State in connection with the contract will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

5.15 **Inspector General**. The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the award, negotiation and performance of the contract, and may demand and obtain records and testimony from the Bidder and its subcontractors and lower tier subcontractors. Bidder shall agree that in addition to all other remedies and consequences provided by law, the failure of Bidder or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of the contract justifying its termination.

5.16 **Compliance with Applicable Laws**. Bidder must obtain all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Bidder must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of the awarded contract and must comply with the same at its own expense.

5.17 **State of Florida Division of Corporations Information**. It is the Bidder's responsibility to comply with all state business requirements. All corporations, companies and partnerships must have the authority to transact business in the State of Florida and be in good standing with the Florida Secretary of State. If the Bidder is an out-of-state or foreign corporation, company or partnership, the Bidder must obtain the authority to conduct business in the State of Florida. Corporations, companies or partnerships that are not in good standing with the Florida Secretary of State at the time of a submission to this ITB may be deemed non-responsible. If successful in obtaining a contract award under this ITB, the Bidder must remain in good standing throughout the contractual period of performance.

5.18 **Taxes**. Bidder shall be responsible for the payment of all taxes related to or arising out of Bidder's work or services under an awarded contract, including by way of illustration but not limited to, federal income tax, social security tax, unemployment insurance taxes and any other taxes or business taxes, as required. The City is exempt from paying state and local sales taxes and will furnish an exemption certificate upon request. Bidder is not entitled to use the City's tax exemption for its own purposes.

5.19 **Non-Discrimination**. In performing under the contract, Bidder shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation. Bidder and its subcontractors shall not unlawfully discriminate (as proscribed by federal, state, county, city and any other local law) against any employee, city employee working with the Bidder or its subcontractor, or applicant for employment with such Bidder or subcontractor on the basis of that person's race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status, or sexual orientation, or association with members of such protected classes. The Bidder or subcontractor shall take action to ensure that applicants are not discriminated against and that employees are treated equally during employment

5.20 **Safety and Environmental Laws**. In performing the work, the Bidder shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards, applicable environmental laws and any other applicable rules, regulations and permits. Bidder bears full responsibility for training, safety, and providing necessary equipment for all Bidder personnel throughout the term of the Contract. Upon request, Bidder will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.

5.21 **Federal and State Immigration Laws**. Bidder agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under any contract awarded. Bidder will ensure and keep appropriate records to demonstrate that all Bidder personnel have a legal right to live and work in the United States. The knowing employment by Bidder or its sub-contractors of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited.

5.22 **Prohibited Persons**. Neither Contractor nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Contractor) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf), (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "Prohibited Person").

5.23 **Reservations of Rights by City; Disclosure and Disclaimer**.
Bidders interested in pursuing this opportunity are urged to make such evaluations as they deem advisable and to reach independent conclusions concerning statements in this ITB and any supplemental materials and drawings, based on their own investigation. Any reliance on the contents of this ITB, or on any other prior communications with the City or its employees, representatives or advisors shall be at Bidder's own risk. Bidders should rely exclusively on their own investigations, interpretations and analyses in connection with this ITB.

City reserves the right to issue written addenda regarding this Invitation to Bid (ITB) to clarify, comment, correct, supplement, amend or otherwise modify this ITB prior to the Bid Submittal Deadline.

The City may seek clarification of the Bid from Bidder at any time, and failure to respond is cause for rejection.

The City reserves the right to inspect all facilities of Bidders.

Submission of a Bid confers on Bidder no right to an award or to a subsequent contract. All decisions on compliance, evaluation, terms and conditions shall be made solely at the City's discretion and made to favor the City.

The City does not warrant or represent that any award will be made as a result of the issuance of this ITB. Any recipient of this ITB or Bidder who responds hereto agrees to be bound by the terms of this ITB. Any Bid submitted pursuant to this ITB is at the sole risk and responsibility of Bidder.

This ITB is not to be construed as an offer by the City. This ITB may be withdrawn or cancelled, either before or after the Bid Submittal Deadline, and may or may not be re-bid when determined to be in the best interests of the City. Any withdrawal or cancellation of this ITB, either before or after selection of a bidder, shall be without liability or obligation on the part of the City or its employees. Any action taken by the City regarding this ITB, in making an award, withdrawal or cancellation of award, or failure or refusal to make any award, or in any withdrawal or cancellation of this ITB, either before or after issuance of an award, shall be without any liability or obligation on the part of the City, its employees, its advisors, or agents.

Bids may be considered irregular and may be rejected if the Bid: 1) does not strictly conform to the requirements of the Invitation to Bid; 2) is incomplete; 3) any Bid Form is altered; 4) contains additions not called for; 5) is conditional; 6) contains prices that are, in the opinion of City, unbalanced either in excess or below the reasonable cost analysis values; 7) the Bid is in excess of the approved budget for the Work.

The City reserves the right to waive any non-material irregularities and technicalities, except timeliness and signature requirements. Any Bid received without an authorized signature or past the Bid Submittal Deadline will be rejected.

Any or all Bids may be accepted or rejected, in whole or in part, with or without cause, when determined by the City to be in the best interest of the City. The City reserves the right to rebid the solicitation; to reject non-responsive or

non-responsible bids; to reject unbalanced bids; to reject bids where the terms, prices, and/or awards are conditioned upon another event; to reject individual bids for failure to meet any requirement; to award by item, part or portion of an item, group of items, or total; to make multiple awards; to waive minor irregularities, defects, omissions, technicalities or form errors in any Bid. This Invitation to Bid may be cancelled and may or may not be re-bid when determined to be in the best interests of the City.

Any or all Bids may be accepted or rejected, in whole or in part, with or without cause, when determined by the City to be in the best interest of the City. Nothing in this ITB is intended to restrict the City in any way in the selection of the Bidder/Bid that best meets the needs of the City.
The City reserves the right to reject the Bid of any Bidder who has previously failed in the performance of an award or to deliver contracts of a similar nature on time or who is not in a position to perform properly under this award.

No binding contract will exist between the Bidder and the City until a written contract is fully executed by the parties.

This ITB is being issued by City without any warranty or representation, express or implied, as to its content, accuracy or completeness and no Bidder or other party shall have recourse to the City or its agents or advisors if any information herein contained shall be inaccurate or incomplete. This ITB is made subject to correction of errors or omissions, or withdrawal without notice.

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# SECTION 6 – CITY OF WEST PALM BEACH SAMPLE CONTRACT

**Contract No.**
**Procurement Method:**

**Provider Name**:

**Provider Address**:

Email:

Telephone:

FEI/EIN #

THIS CONTRACT is made and entered into by and between the **PROVIDER** identified above and the **CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida, whose address is 401 Clematis Street, West Palm Beach, Florida 33401 (the "City").

WHEREAS, the City issued its Invitation to Bid No. 18-19-115 (the "ITB") pursuant to state and local law to solicit contractors to perform water storage tank cleaning and repair services on as needed basis, (the "Work" or "Services"); and

WHEREAS, the Provider submitted its Bid in response; and

WHEREAS, the City determined that the Provider's Bid represents the best value to City and wishes to contract with Provider under the terms and conditions contained in the Invitation to Bid;

NOW THEREFORE, in consideration of the promises and mutual covenants and obligations herein contained, and subject to the terms and conditions herein stated, the City and Provider understand and agree as follows:

**1. THE WORK.**

1.1 Services. The Provider hereby agrees to furnish all the materials, equipment, tools, labor, supervision, licensing, permits, transportation and incidentals necessary to provide water storage tank cleaning and repair, on an as-needed basis for various City tanks. The Services shall be provided subject to and in accordance with the terms, conditions and provisions of the ITB, attached as **Exhibit A**, and the Bid, attached as **Exhibit B**. The ITB and Bid are expressly incorporated into this Agreement by reference. The ITB, Bid and this Agreement are collectively referred to as the "Contract Documents". All Services shall be performed in accordance with the Technical Specifications set forth in the ITB. Unless otherwise specified, the Provider agrees to furnish all equipment and labor necessary for the performance of the Work in a good, firm, substantial and workmanlike manner, in accordance with any applicable plans, drawings, and technical specifications. The Provider shall, if required, furnish satisfactory evidence as to the kind and quality of materials. There is no guarantee of any minimum value, quantity or frequency of work under this Agreement.

Services shall: (i) meet the requirement of Florida Administrative Code Section 62-5455.350(2);
(ii) comply with the OSHA Regulation for Lock Out/ Tag Out of each tank while diving.

Tank inspections shall be performed under the responsible charge of a professional engineer licensed in Florida.

Unless otherwise specified, all materials used shall be new and both workmanship and materials shall be of good quality. Services shall be provided in accordance with all applicable codes and standards, including OSHA, AWWA, ACI and standard pre-stressed concrete tank design.

1.2 Service, Fulfillment and Emergency Response Time. The Provider shall provide a 24-hour, 7 day a week telephone answering or beeper service to accept and record emergency service call requests from the City. Emergency service call requests such as, but not limited to, situations which present an unsafe or destructive condition, shall require work to be started within three (3) hours from time call is placed and Provider shall be available and service performed 24 hours a day, 7 days a week.

1.3 It is hereby made a part of this Agreement that before, during and after a public emergency, disaster, hurricane, flood or Act of God that the City, shall receive services on a "first priority" basis.

1.4 Services Provided in Response to Natural Disaster / Emergency. Provider provides services that the City may require in the event of a hurricane or other disaster. Provider acknowledges and agrees that in such event, the City may apply to the State of Florida or the federal government for funds which will be used to pay Provider or reimburse the City for payments made to Supplier. FEMA will only consider reimbursing contracts which contain the requisite FEMA provisions. Provider desires to be eligible to be awarded disaster work and be compensated through federal funds. The City and Provider agree that with respect to any services or work performed or provided by Provider or its subcontractors under the Agreement arising or related to a disaster event, the provisions set forth in the FEMA Addendum (the "FEMA Requirements"), a copy of which is attached hereto as **Exhibit C** and incorporated herein by reference, shall apply. The FEMA Requirements shall only modify this Agreement upon the provision by Provider of work or services required as a result of a disaster. The terms and conditions of the Agreement and the FEMA Requirements should be read to operate in concert, except where directly in conflict. In the event of a conflict between the terms of the Agreement and the FEMA Requirements, the FEMA Requirements shall govern and prevail.

1.5 Permits. Contractor shall obtain all permits and licenses required by law or ordinance and shall maintain the same in full force and effect. All permits and licenses shall be obtained at the Contractor's expense. Any changes of the licenses, permits, or certification shall be reported to the City within thirty (30) days.

**2. Non-Exclusive.** This Agreement is non-exclusive and the City reserves the right to contract with other parties for the Services provided herein.

**3. Method of Ordering.**

3.1 Direct Orders/Purchase Orders. Services under $10,000 may be requested by Purchase Order. For work not exceeding $10,000, the Provider will have three (3) working days from the date of the City's request to submit a budgetary estimate. Failure to timely submit a budgetary estimate may result in loss of work to the Provider and the City awarding work to another available contractor. In the event that the City and Provider fail to agree on the proposed scope and cost estimate, the City may move on to negotiate with another provider.

3.2 Work Orders. Services in excess of $10,000 will be requested by the City via Work Order. As funding becomes available, the City will issue a separate Work Order for each individual assignment on as needed basis, which shall be substantially in the same format as the Work Order attached at the end of this Contract and incorporated herein as **Exhibit D**. The services to be provided under the assignments shall commence and be completed by the dates indicated on the Work Orders. The individual Work Orders will specify the work to be performed, its location and not-to-exceed cost (based on the contract unit prices), and a schedule for performance. No work in excess of $10,000 is authorized until a Work Order is fully executed by the City. All terms and conditions of this Agreement will be applicable to each Work Order. Upon completion of Work Order task, the Provider will submit an individual invoice, a copy of the original Work Order and the appropriate completed Small Business participation form as required by the Contract Documents. In the event that the City and Provider fail to agree on the proposed scope, schedule and cost estimate, the City may move on to negotiate with another available provider.

**4. Estimated Expenditures.** City does not guarantee any minimum amount of work needed or work orders issues, or to the extent of services to be required under this Agreement. It is understood and agreed that the City's obligation to pay under the Agreement is contingent upon an annual appropriation for its purpose by the City.

**5. Rates.** The rates for the Services and materials shall be those established in Provider's Schedule of Bid items in response to the City's ITB which are incorporated into this Agreement by reference. The fee for each individual work order shall be specified in the work order and shall be based on the rates from the ITB.

**6. Invoices.** Invoices must identify the PO number and shall be submitted to: **West Palm Beach Finance Department, Attn: Accounts Payable**, P.O. Box 3366, West Palm Beach, FL 33402-3366. Invoices shall show the nature of the service and dates(s) of service. Invoices based on hourly rates shall show the actual hours worked, person performing services, nature of the service, hourly rate, and dates(s) of service. Invoices may be submitted no more frequently than monthly. However, all services rendered prior to September 30th of any given year are required to be invoiced by September 30th of that year. If Provider fails to submit an invoice within one (1) year after completion of all Services, any amounts owed as final payment shall be forfeited. Forfeiture will not apply to existing claims or pending legal proceedings. **Provider shall provide W-9 or FEIN# to City with first invoice.**

**7. Payment**. The Fee shall be paid based on receipt of a proper invoice in accordance with the invoice schedule indicated above. Payment of invoice(s) will be made in accordance with the Local Government Prompt Payment Act, Section 218.70, et al., Florida Statutes, as amended, which provides for prompt payment, interest payments, a dispute resolution provided detailed invoices are submitted in compliance with the terms of this Agreement. No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement by Provider, either wholly or in part, and no payment shall be construed to be an acceptance of or to relieve Provider of liability for the defective, faulty or incomplete rendition of the Services.

**8. Term**.

8.1 Term of Contract. Subject to the termination rights of the City as provided herein, this Contract shall have a term of three (3) years, commencing as of the date of execution by the City.

8.2 Renewal. Upon the mutual written agreement of the parties, this Contract may be renewed for an additional two (2) year term. Contract renewal will only be effective upon a written contract amendment executed by both parties. Renewal terms and conditions will be the same as the base contract. Any renewals will be subject to appropriation of funds by the City.

**9. No Lien**. The Provider shall not at any time permit any lien, attachment, or any other encumbrance under the laws of the State of Florida, or otherwise, by any person or persons whomsoever to be filed or recorded against the City, against any City property or money due or to become due for any work done or materials furnished under this Agreement by Provider.

**10. Representations, Warranties and Covenants of Provider**

10.1 **Authority**. Provider hereby represents and warrants to the City that it has full power and authority to enter into and fully perform its obligations under this Agreement without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it.

10.2 **Duly Licensed**. Provider represents that it is duly licensed to perform the Services under this Agreement and that it will continue to maintain all licenses and approvals required to conduct its business.

10.3 **No Contingency**. Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Provider, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by Provider, the City shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the contract fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**11. Standard of Care**. The standard of care for all services performed or furnished by Provider under this Agreement will be the care and skill ordinarily used by members of Provider's profession practicing under similar circumstances or at the same time and in the same locality.

**12. Safety Regulations**. Provider shall ensure that the all Equipment, materials and procedures and training provided under this Agreement meet all local, State, OSHA and other Federal safety and any other applicable safety regulation.

**13. Damage to Property**. The Provider shall, at all times, guard against damage or loss to the property of the City and shall be responsible for replacing or repairing any such loss or damage. The City may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property due to Provider or its agents or employees. Provider is responsible for any damage to public or private property by Provider, its employees or agents while performing the work under this Agreement.

**14. Compliance with Laws**.

14.1 Compliance with Laws. Provider shall comply with all applicable City, State and Federal laws relating to the scope of work under this Contract, now or hereafter in effect. It shall not be grounds for a change order that Provider failed to investigate the codes and regulations of all applicable government agencies with jurisdiction over the Work.

14.2 Non-Discrimination. In performing under this Agreement, Provider shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

14.3 Discriminatory Vendor List. In accordance with Fla. Stat. Sec. 287.134, Provider represents that it has never been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

14.4 Public Entity Crimes. In accordance with Fla. Stat. Sec. 287.134, Provider certifies that Provider, its affiliates, suppliers, subcontractors and consultants who will perform under this Agreement have not been placed on the Convicted Vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date of this Agreement and that execution of the Agreement will not violate the statute. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

14.5 Scrutinized Companies Lists. Pursuant to Fla. Stat. Sec. 287.135, Provider represents that Provider is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Additionally, if the Contract Price is One Million Dollars ($1,000,000) or more, Provider represents that neither the Provider firm nor its principals or owners are listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

14.6 Federal Labor / Employment Laws. In accordance with Fla. Stat. Sec. 255.20, Provider represents that it has not been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

14.7 Prohibited Persons. Neither Provider nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Provider) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf), (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "Prohibited Person").

**15. Independent Contractor**. Provider acknowledges and agrees that Provider is an independent contractor of the City. Provider more specifically acknowledges that its employees will not be covered by the City's workers' compensation insurance; Provider will be solely and exclusively responsible for payment of all federal and state income taxes due in respect of all compensation and/or other consideration paid by the City to Provider under this Agreement. Provider shall be responsible for social security, unemployment and disability taxes and all other payroll taxes due with respect to Provider's employees who provide Services under this Agreement. Provider acknowledges that it shall have no authority to bind City to any contractual or other obligation whatsoever. Provider shall be entitled to seek and accept other engagements and/or employment during the term of this Agreement so long as such other employment or engagements do not interfere with the performance of Provider's duties under this Agreement. Provider shall be responsible to the City for all work or services performed by Provider or any person or firm engaged as a sub-consultant or subcontractor to perform work in fulfillment of this Agreement.

**16. Right to Audit.** Provider shall maintain adequate records for the Services performed under this Agreement for five (5) years following completion of the Services, or conclusion of any litigation regarding this Agreement. The City shall have the right to audit Provider's books and records, at the City's expense, upon prior notice, with regard to the Services provided to the City under this Agreement. Provider shall allow the City or its representative to interview all current or former employees to discuss matters pertinent to this Agreement. If an audit inspection in accordance with this section discloses overpricing or overcharges (of any nature) by Provider to the City in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the City's Internal Audit department shall be reimbursed to the City by the Provider and (2) a 15% penalty of the overpricing or overcharges

shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Provider within 45 days from presentation of City's findings to Provider. Failure by Provider to permit such audit shall be grounds for termination of this Agreement by the City.

**17. Insurance.**

17.1 All Insurance Policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Palm Beach County, Florida, and (c) have a Best's rating of A- VI or better.

17.2 Coverage shall be maintained without interruption from the effective date of this Agreement until date of final payment and termination of any coverage required to be maintained after final payment. Any liability coverage on claims made basis shall remain effective for five (5) years after final payment. If any of the required insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

17.3 The City shall be provided a minimum of thirty (30) days prior written notice of any adverse material change, including any reduction, non-renewal or cancellation of Contractor's required insurance coverage, or any increase in the Provider's self-insurance retention.

17.4 Required Coverage: Provider shall maintain following liability coverage, in the limits specified:

Commercial General Liability. Commercial General Liability Insurance for all operations including but not limited to Contractual, Products and Completed Operations and Personal Injury with limits of not less than Two Million Dollars ($2,000,000) (aggregate) and One Million Dollars ($1,000,000) per occurrence combined single limit for bodily injury and property damage. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements and the policy must include coverage for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. May not be subject to a self-insured retention or deductible exceeding $25,000.

Business Automobile Liability: Business automobile liability insurance with minimum limits of Two Million Dollars ($2,000,000) per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements and must include owned vehicles and hired and non-owned vehicles. May not be subject to a self-insured retention or deductible exceeding $10,000.

Worker's Compensation: Worker's Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than $500,000 "each accident," $500,000 "disease policy limit," and $500,000 "disease each employee."

17.5 Additional Insureds. All required insurance (except Worker's Compensation and Professional Liability) shall include an Additional Insured endorsement identifying "the City of West Palm, its commissioners, officers, employees and agents", as Additional Insureds. No costs shall be paid by the City for an additional insured endorsement.

17.6 Certificate of Insurance. Provider shall provide the City Risk Manager or the City Agreement Manager with a copy of the Certificate of Insurance and endorsements evidencing the types of Insurance and coverage required by this article within three (3) calendar days of Provider's receipt of Notice of Intent to Award the Agreement and, at any time thereafter, upon request by the City. It is Provider's responsibility to ensure that the Risk Manager and the Agreement Manager both have a current Insurance Certificate and endorsements at all times.

17.7 Renewal of Insurance: Provider shall be responsible for assuring that the insurance certificate/ endorsements required in conjunction with this section remains in force for the duration of the contractual period. If the insurance certificate/endorsements are scheduled to expire during this period, Provider shall be responsible for submitting a new or renewed insurance certificate/ endorsements to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificate/endorsements are not replaced with a new

or renewed certificate which covers the contractual period, Owner may suspend this Agreement until such time as the new or renewed certificate/endorsements are received by City.

17.8 Waiver of Subrogation. The City and Provider waive all rights against (1) each other and any of their subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the Agreement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the City as trustee. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**18. Indemnity.** Provider agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from City, its officials, agents, or employees by reason of any damage to property or personal injury, including death, and which damage, injury or death arises out of or is incidental to or in any way connected with Provider's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of Provider in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death arises out of or is incidental to or in any way connected with Provider's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by Provider. This indemnification includes, but is not limited to, the performance of this Agreement by Provider or any act or omission of Provider, its agents, servants, contractors, patrons, guests or invitees and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. Provider agrees to pay all claims and losses and shall defend all suits, in the name of the City, its employees, and officers, including but not limited to appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Provider under this indemnification provision. To the extent considered necessary by the City, any sums due Provider under this Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This paragraph shall not be construed to require Provider to indemnify the City for its own negligence, or intentional acts of the City, its agents or employees. Nothing in this Agreement shall be deemed to be a waiver of the City's sovereign immunity or a waiver of the limitations under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

**19. Termination.**

19.1 Either party may terminate this Agreement for cause in the event that: (1) the other party violates any material provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of its obligations hereunder, upon written notice to said defaulting party thirty (30) calendar days prior to termination. As a condition precedent to termination for cause, the defaulting party shall have the right to cure within a reasonable period

19.2 The City shall have the right to terminate this Agreement, in whole or in part, with or without cause, and for its convenience, upon five (5) days written notice to Provider. Provider shall have no right to terminate this Agreement for convenience.

19.3 In the event of termination, Provider shall immediately deliver all documents, written information, electronic data, public records, and other materials concerning this Agreement in Provider's possession to the City and shall cooperate in transition of its duties to appropriate parties at the direction of the City.

19.4 In the event of termination, the City shall compensate the Provider for all authorized work satisfactorily performed through the termination date under the payment terms contained in this Agreement.

19.5 Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability hereunder, except that the provisions of this Section and the provisions regarding the right to audit, property rights, insurance, indemnification, governing law and litigation shall survive termination of this Agreement and remain in full force and effect.

**20. Notices**. All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to Provider at the address on the first page of this Agreement; or to the City, to P.O. Box 3366, West Palm Beach, FL 33402, attention: City Administrator,, with a copy to the City Attorney, or to such other address or person as shall be designated by a party in a written notice given in the manner required hereby.

**21. Taxes.** Provider understands that in performing the Services for the City, Provider is not exempt from paying sales tax to Provider's suppliers for materials required for Provider to perform under this Agreement. Provider shall not be authorized to use City's tax exemption number for purchasing supplies or materials.

**22. Availability of Funds**. This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the City. If funding for this Agreement is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Agreement become unavailable, the City may terminate this Agreement upon no less than twenty-four (24) hours' notice to Provider. The City shall be the sole and final authority as to the availability of funds.

**23. Non Discrimination**. Provider shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

**24. Assignment.** This Agreement requires the skills and experience of Provider and may not be assigned by Provider. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

**25. Force Majeure**. Any deadline provided for in this Agreement may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God, provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions. When one of the foregoing conditions interferes with contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided that no such extension shall be made unless notice thereof is presented by Provider to City in writing within ten (10) business days after the start of the occurrence of such delay; and further provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

**26. Ethics; Conflict of Interest**.

26.1 Provider shall comply with the ethics requirements of the City Code and the Palm Beach County Ethics Code.

26.2 Conflicts of Interest.

a. Provider represents that it has not given or accepted a kickback in relation to the Contract and has not solicited the Contract by payment or acceptance of a gratuity or offer of employment.

b. Provider represents that it has not solicited the Contract by payment of a gift or gratuity or offer of employment to the mayor or members of the City of West Palm Beach commission, any official, department director, head of any City of West Palm Beach agency, employee of the City of West Palm Beach, any City of West Palm Beach agency or selection committee, or member of any board, committee, or agency of the City of West Palm Beach or any of their immediate family or close personal relation (the "Conflict Group").

c. Provider represents that it does not employ, directly or indirectly any member of the Conflict Group.

d. Provider represents that neither it nor its subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included

in the Project in which any City commissioner, mayor or officer, during tenure or for 2 years thereafter, has any interest, direct or indirect.

e. Provider represent that no member of the Conflict Group, who alone, or together with his household members, is a stockholder or holder of an interest, of 5% or more, in any business entity affiliated with Provider.

f. Provider represents that it has not knowingly given, directly or indirectly, any gift with a value greater than $100 in the aggregate in any calendar year to any member of the Conflict Group that provides regulation, oversight, management or policy-setting recommendations regarding Provider or its business.

g. Provider, its officers, personnel, subsidiaries and subcontractors shall not have or hold any continuing or frequently recurring employment, contractual relationship, business association or other circumstance which may influence or appear to influence Provider's exercise of judgment or quality of the Services being provided under this Agreement. Provider, its officers, personnel, subsidiaries and subcontractors shall not perform consulting work for any third party that would in any way be in conflict with the Services to be provided to the City under this Agreement.

h. Provider, its officers, personnel, subsidiaries and subcontractors shall not, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding unless compelled by court process. Further, Provider agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City or in connection with any pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

i. Provider shall promptly notify the City in writing by certified mail of all potential conflicts of interest or any event described in this Section. Said notification shall identify the prospective business interest or circumstance and the nature of work that Provider intends to undertake and shall request the opinion of the City as to whether such association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Provider. The City agrees to notify the Provider by certified mail of its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Provider, the City shall so state in its opinion and the Provider may, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by Provider under this Agreement.

j. In the event Provider is permitted to utilize subcontractors to perform any Work under the Contract, Provider agrees to prohibit such subcontractors, by written contract, from having any such conflicts of interest.

26.3 Lobbying Certification. Provider certifies to the best of its knowledge and belief that no funds or other resources received from the state in connection with the Contract will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

26.4 Inspector General. Provider is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of the Contract, and may demand and obtain records and testimony from Provider and its subcontractors. Provider understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Provider or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by City to be a material breach of the Agreement justifying its termination.

**27. Small Business Requirements.** Provider shall comply with the City's Small Business Ordinance set forth in Chapter 66 of the Code of Ordinances of the City of West Palm Beach, which is incorporated herein by this reference. Provider shall comply with the small business commitment contained in Provider's Proposal, or as approved by the Small Business Division. Provider shall maintain all relevant records and information necessary to document compliance with the Small Business Ordinance and shall allow the City to inspect and audit such records.

**28. Public Records Law.**

28.1 **Public Records**. Provider shall comply with Chapter 119, Florida Statutes, regarding public records. Provider shall keep and maintain all documents, correspondence, reports, computer files, emails, plans, drawings, calculations, technical specifications, sketches, photographs, videos, illustrations, tracings, specifications, maps, etc., prepared in order to perform the services under this Agreement. Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records requirements may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by Provider, except as authorized by law and specifically authorized by City.

28.2 A request to inspect or copy public records relating to this Contract must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Provider of the request, and the Provider shall provide the records to the City or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the City, upon request, in a format that is compatible with the information technology systems of the City.

28.3 Upon completion of the Agreement, Provider shall transfer, at no cost, to the City all public records in possession of Provider. Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

28.4 Failure of the Provider to provide public records to the City within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of the Contract by the City, in addition to any other remedies available under the Contract or by law.

28.5 IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY CLERK, WHO IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AT:

Office of the City Clerk
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401
561-822-1210
CityClerk@wpb.org

**29. Remedies**. No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy granted by this Agreement or now or hereafter existing at law or in equity or by stature or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof. In addition to any other remedies, in the event of a breach or violation of the Agreement by Provider, Provider may be subject to debarment or suspension from consideration for the award of additional contracts from the City, pursuant to the terms and procedures set forth in the City Code.

**30. Time of Essence**. Time shall be of the essence for each and every provision of this Agreement.

**31. Governing Law; Jurisdiction; Venue; Litigation**. This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The City and Provider submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or the Federal Southern District of Florida. Provider agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

**32. Severability**. In the event that any term or provision of this shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other

term and provision of this Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

**33. Waiver**. Any waiver by either party hereto of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

**34. Headings.** The headings contained in this Agreement are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Agreement.

**35. Attorney Fees**. In the event suit is filed to construe or enforce this Agreement, each party in such suit shall bear its own costs and expenses incurred in connection therewith, including, but not limited to, attorneys' fees and costs through trial and appeal.

**36. Controlling Provisions.** Except as otherwise specifically provided herein, in the event of any conflict between the specific provisions of this Agreement and the requirements or provisions of the Procurement Solicitation and/or Proposal, the provisions shall be given precedence in the following order: (1) this Agreement, (2) the Procurement Solicitation; and (3) the Proposal. Wherever possible, the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents.

**37. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument.

**38. No Verbal Agreements.** No verbal agreement or conversation with any officer, agent or employee of City either before or after execution of this Agreement shall affect or modify any of the terms or obligations contained in any of the documents comprising said Contract. All Contract amendments shall be in writing and executed by the authorized representatives of both City and Provider.

**39. Exhibits**. The Exhibits referenced in this Agreement are incorporated into this Agreement, regardless of whether they are attached.

**40. Entire Agreement; Amendment.** This Agreement including the Procurement Solicitation, the Proposal and any Exhibits, which are incorporated into this Agreement in their entirety, embody the entire agreementand understanding of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. This Agreement may only be amended or modified by written amendment executed by the City and Provider.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year last executed below.

**PROVIDER**

By: _____

Print Name: _____

Title: _____

**CITY OF WEST PALM BEACH**

By: _____
_____, Mayor

Attest: _____
City Clerk

Date: _____, 20__

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

WEST PALM BEACH

**City of West Palm Beach**

**WORK ORDER NO. _____**

**Contract #:** _____

**Contractor:** _____

**Work Order Task Title:** _____

1. **Task / Project:**

A detailed Scope of Work is attached as **Exhibit A**.

2. **Schedule**

The Contractor shall commence services under this Work Order on the date indicated in the Notice to Proceed and fully complete said Work in accordance with **Exhibit** ____.

3. **Compensation**

The total amount to be paid to the Contractor by the City under this Work Order, based upon the unit prices/ rates set forth in the Contract, shall not exceed the sum of _____ ($_____) . A detailed schedule of values is attached as **Exhibit** ___.

4. **Small Business**

The small business commitment for this Work Order is _____%.

5. **Insurance.**

Contractor hereby confirms that it maintains the insurance coverages required under the Contract and that certificates of insurance evidencing current policies are on file with the City as of the date of this Work Order.

6. **Contract Reference**

This Work Order shall be performed under the terms and conditions described within the master contract titled_____, dated _____ by and between the City of West Palm Beach and the Contractor named above.

Contractor:

_____

By:_____

Print Name: _____

Title: _____

**CITY OF WEST PALM BEACH**

_____
Geraldine Muoio, Mayor

Date: _____

ATTEST: _____
City Clerk

CITY ATTORNEY'S OFFICE
Approval as to form and legality
By:_____

WEST PALM BEACH

# CITY OF WEST PALM BEACH (A1)

## Prior Experience

Bidder Company Name: _____

Bidder shall provide a detailed summary of prior experience evidencing successful completion a minimum of three (3) water storage tank cleaning and/or repair projects. The Bidder shall provide current names and telephone numbers of agency references for each project provided.

**PROJECT NAME:** _____

Project Location: _____

Project Description: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Owner/Contact: _____

Name Title

Telephone: ( ) _____ Fax: ( ) _____ E-Mail: _____

**NOTE:** Include additional pages with the same format if Bidder wants to list other projects as proof of prior experience. List a minimum of three (3) similar projects.

**Failure to fully and accurately provide the information required in Form A1 may result in disqualification of the Bid. All decisions of the City are final.**

WEST PALM BEACH

## CITY OF WEST PALM BEACH (B1)

# BID PACKAGE COVER SHEET

ITB 18-19-115 Project Title: Water Storage Tank Cleaning and Repair Services

Bidder Company Name: .....

The following documents must be included in the Bid package:

_____ 1. Prior Experience (A1)
_____ 2. Bid Package Cover Sheet. (Form B1)
_____ 3. Bid (Form B2) **Must be signed**
_____ 4. Schedule of Bid Prices (Form B3) **Must be signed**
_____ 5. Contractor Verification (Form B6). Check the license and insurance requirements to ensure that you will comply and attach copies of current licenses.
_____ 6. Reference List (Form B7)
_____ 7. Affidavit of Prime Bidder re Non-collusion (Form B8). Be sure to sign and notarize the signature.
_____ 8. Drug Free Certification (Form B9)
_____ 9. Equal Benefits Certification (Form B17)
_____ 10. Scrutinized Corporation Certification (Form B18)
_____ 11. Public Utilities Environmental Policy Receipt (if applicable, for utility project) (Form B19)
_____ 12. Copies of licenses, certifications and registrations

Clearly mark the outside lower left corner of the Envelope with the firm name, Invitation to Bid number and title, and the date and time for the bid closing deadline.

**Submit one (1) original, one (1) electronic version and two (2) photocopies of your Bid package.**

**AVOID BID REJECTION:**
**All bids must be submitted on the provided Bid forms (A1, B1, B2, B3, B6, B7, B8, B9, B17, B18, B19).**
**Forms B2 and B3 must be signed in ink by an officer authorized to bind the Bidder.**
**All Forms must be fully completed.**

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B2)

## BID

**ITB 18-19-115**

**Proposal of:** _____
*(Bidder Company Name)*

Bid Amount: $ See Schedule of Bid Items Form B3

See Schedule of Bid Items Form B3
*(Write Dollar Figure Here)*

The Bidder agrees to furnish all labor, equipment, tools, materials, manufactured articles, supplies, documents, permits, transportation and services, including fuel, power, water and essential communications, to be provided by Contractor to fulfill Contractor's obligations under the contract and shall execute and complete, to the satisfaction of Owner and in accordance with the terms and conditions of the Contract Documents, all work.

The undersigned Bidder hereby declares that:

1. No Lobbying. Bidder acknowledges that contact by Bidder, or anyone representing a Proposer, regarding this ITB with the Mayor, any City Commissioner, officer, City employee, other than an employee of the West Palm Beach Procurement Division, is grounds for disqualification.

2. This Bid is made in good faith, without collusion or fraud and is fair and competitive in all respects.

3. The Bidder has carefully and to his full satisfaction examined the Invitation to Bid, and Bidder has read all issued addenda issued.

4. Bidder furthermore agrees that, in case of failure on his part to execute a Contract and provide all required documents within ten (10) calendar days of receipt of the Contract for execution, the City may withdraw the offer and contract with another bidder..

5. Small Business participation for this project is 0%.

6. Bidder shall be responsible for all permitting fees and utility service connection fees.

7. All debris is to be legally disposed of at a licensed disposal site in accordance with city, state, and federal standards.

8. The following officer, director or agent of the Bidder is also an employee of the City of West Palm Beach:

*Name* *Address*

_____

_____

9. The following employee(s) of the City of West Palm Beach hold, either directly or indirectly, an interest of 10% or more of Bidder or its affiliates or subsidiaries:

*Name* *Address*

_____

_____

10. Bidder certifies that it has not been placed on the Convicted Vendor List maintained by the State of Florida for a period of 36 months from the date of this Bid.

11. Bidder certifies that it has not been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

12. Bidder certifies that Bidder's company, principals, or owners are not listed on the Scrutinized Companies that Boycott Israel List and is not engaged in a boycott of Israel. If this Bid is equal to or greater than One Million Dollars ($1,000,000), Bidder further certifies that Bidder's company, principals, or owners are not listed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba.

13. Bidder certifies that it has not been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 yea

**14. Bidder acknowledges that ADDENDA NO(S). _____ have been RECEIVED and are ATTACHED HERETO and are signed by a duly authorized officer of Bidder.**

**15. By signing and submitting this Bid, Bidder represents that all Bid Forms are fully complete and accurate.**

**16. Bidder acknowledges that the Bid may be rejected if all Bid Forms are not fully complete, not accurate or if forms are not signed by properly authorized signatures where required.**

Bidder Company Name: _____

Business Address: (Street, City, State, Zip Code) _____

_____

State of Incorporated: _____ Telephone:_____ Fax:_____

Email: _____

**BIDDER**:

_____

***Signature of Official authorized to bind Bidder.***
*(Sign in **blue** ink)*

Print Name: _____

Title: _____

Date: _____

**Failure to fully complete and sign this Bid Form may result in rejection of the Bid.**

WEST PALM BEACH

CITY OF WEST PALM

(B3)

## SCHEDULE OF BID ITEMS

**ITB 18-19-115**
**PROJECT TITLE: Water Storage Tank Cleaning and Repair Services**

**PLEASE SEE EXCEL WORKSHEET ATTACHED.**

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B6)

**ITB 18-19-115**

## CONTRACTOR VERIFICATION FORM

PRIME BIDDER:

Name of Firm: _____

Address: _____

_____

Telephone: ( ) _____

Fax: ( ) _____

GENERAL CONTRACTOR OF RECORD:

Name: _____

Address: _____

_____

Email: _____

State License # _____ **(ATTACH COPY)**

County License # _____ **(ATTACH COPY)**

Type of License: _____

Unlimited _____ (yes/no)

If "NO", Limited to what trade? _____

Is the General Contractor a full-time employee of Prime Bidder?

____ Yes _____ No

Will the General Contractor be in responsible charge of the work performed and installed under this contract?

____ Yes _____ No

City License: **(COPY OF CITY REGISTRATION OR BUSINESS TAX RECEIPT –MUST BE OBTAINED PRIOR TO CONTRACT EXECUTION** – *Maybe obtained from City Construction Services* **)**

***Failure to fully or accurately complete this form may be cause for rejection of the bid.***

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B7)

**ITB 18-19-115**

## LIST OF REFERENCES

1. Owner's Name & Address: _____

_____

Project: _____

Contact Person _____

Telephone: (  ) _____ Fax: (  ) _____ E-Mail: _____

2. Owner's Name & Address: _____

_____

Project: _____

Contact Person _____

Telephone: (  ) _____ Fax: (  ) _____ E-Mail: _____

3. Owner's Name & Address: _____

_____

Project: _____

Contact Person _____

Telephone: (  ) _____ Fax: (  ) _____ E-Mail: _____

4. Owner's Name & Address: _____

_____

Project: _____

Contact Person _____

Telephone: (  ) _____ Fax: (  ) _____ E-Mail: _____

WEST PALM BEACH

**(B8)**

## AFFIDAVIT OF PRIME BIDDER
### Re Non-collusion and Public Entity Crime

State of _____}

County of _____}

_____, being first duly sworn, disposes and says that:
(Name)

1. I am the _____ of _____ the
(Title) (Name of Company)
Bidder that has submitted the attached bid;

2. I am fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

4. Neither the Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham Bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of West Palm Beach or any person interested in the proposed Contract; and

5. The following Officer, director or agent of Bidder is also an employee of the City of West Palm Beach: _____ (if none, write "None").

6. The following employees of the City of West Palm Beach own, directly or indirectly, an interest of 10% or more in Bidder firm or any of its affiliates or subsidiaries: _____ (if none, write "None").

7. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

8. Neither the Bidder nor any officer, director, partner, shareholder, employee, member or agent, who is active in the management of Bidder, or any affiliate or subsidiary of Bidder has been convicted of a public entity crime or action regarding antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation with respect to any bid or contract for goods or services to be provided to any public entity, or has been listed on the state Convicted Vendor List, within thirty-six months prior to the date of Bidder's Bid.

(Signed) _____

(Print Name)_____

(Title) _____

The foregoing Affidavit of Bidder regarding Non-Collusion and Public Entity Crime was acknowledged before me this _____*(Date)*

by: _____

_____ who is personally known to me or

_____who has produced _____ as identification

and who did /(did not) take an oath.

_____
Notary Public

Print Name: _____

Commission No. _____

WEST PALM BEACH

CITY OF WEST PALM BEACH **(B9)**

## DRUG FREE WORKPLACE CERTIFICATION

The undersigned Bidder, in accordance with Florida Statute 287.087 hereby certifies that

_____ does:
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under this bid a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities, or contractual services that are under bid, the employee will abide by the terms of the statement, and will notify the employer of any conviction of, or plea of guilty, or *nolo contendre* to any violation of Chapter 1893, or of any controlled substance law of the United States, or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance, or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.

6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

_____
Authorized Signature

_____
Print Name

_____
Date

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B17)

**ITB 18-19-115**

## Equal Benefits Certification

**Equal Benefits Ordinance**. Section 66-9 of the City's Code of Ordinances provides that, with limited exceptions, when contracting for goods, services or construction in an amount of $50,000 or more, with persons or businesses with five or more employees that also provide benefits to employees' spouses and dependents, the City shall contract only with those persons or businesses that provide equal benefits to employees' domestic partners.

**Check only one box below:**

☐ **1.** The firm certifies and represents that it will comply during the entire term of the contract with Sec. 66-9 of the City's Code of Ordinances by providing benefits to employees' domestic partners equal to those benefits provided to employees' spouses and dependents; or

☐ **2.** The firm does not need to comply with Sec. 66-9 of the City's Code of Ordinances because of an allowable exemption: (Check exemptions that apply):

____ The firm's price for the contract term awarded is $50,000 or less.
____ The firm employs less than five (5) employees.
____ The firm does not provide benefits to employees' spouses nor employees' dependents.
____ The firm is a government entity.
____ The contract is for the sale or lease of property.
____ Compliance would violate grant requirements or regulations of federal / state law.
____ The contract is an emergency procurement or necessary to respond to an emergency situation.

☐ **3.** The firm does not comply with Sec. 66-9 of the City's Code of Ordinances and does not have an allowable exemption.

I, _____, _____
(Print Name of Authorized Officer) (Title)

of _____
(Name of Firm)

hereby attest that I have the authority to sign this certification on behalf of the firm and certify that the above information is true, complete and correct.

Signature: _____

STATE OF _____}

COUNTY OF _____}

Sworn to and subscribed before me this _____ day of _____, 20_____, by

_____, as an act of ___ _____ (*firm*), who is

personally known to me or produced the following identification: _____.

[Seal]

Notary Signature: _____

Print Notary Name: _____

Commission No. _____

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B18)

## SCRUTINIZED CORPORATION CERTIFICATION

I, _____, _____
(Print Name of Authorized Officer) (Title)

of _____
(Name of Firm)

hereby attest that:

1. For a bid of any amount, the company and its principals are not on the Scrutinized Companies that Boycott Israel List maintained by the State of Florida and do not engage in any boycott of Israel;

2. For a bid of One Million Dollars or more, the company and its principals certify that they:

   a. are not on the Scrutinized Companies with Activities in Sudan List;

   b. are not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;

   c. do not engage in business in Syria or Cuba.

3. I have the authority to sign this certification on behalf of the company and certify that the above information is true, complete and correct.

Signature: _____

STATE OF _____}

COUNTY OF _____}

Sworn to and subscribed before me this _____ day of _____, 20_____, by

_____, as an act of _____ (*firm*), who is

personally known to me or produced the following identification: _____.

Notary Signature: _____

Print Notary Name: _____

Commission No. _____

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B19)

## PUBLIC UTILITIES DEPARTMENT
## ENVIRONMENTAL POLICY

*This form must be included with any Bid for work involving the City's water, waste water or storm water systems.*

The Public Utilities Department (Utility), as a public service provider for source water conveyance, processing and distribution of water, the conveyance and treatment of sanitary waste, the operation of the storm water system and flood protection, and customer billing and service- have a responsibility to take a leadership role in conducting all operational activities in a manner that protects the environment, as we provide for the health and safety of our employees, customers, and the general public. We have a duty to balance social, environmental and economic factors to ensure the continued success and sustainable management of the Utility.

In keeping with this vision and our responsibility to protect and conserve the environment, we are committed to exceed **environmental compliance** and:

**W**ork together for **continual improvement**

**A**void negative environmental impacts

**T**ransform our Utility into an **environmental & safety leader**

**E**nhance **communication** of our vision

**R**e-evaluate and adjust our everyday tasks to **prevent pollution**

**CONTRACTOR/CONSULTANT COMMUNICATION:**

**I,** _____ (*Print first and last name*) **from** _____ (*Print name of company*), **acknowledge that the City of West Palm Beach Public Utilities Department has communicated their ISO 14001 Environmental Policy with me on** _____ (*Print date*).

(*Contact Project Manager for details.*)

**X**_____

**(*Signature of contractor/consultant or representative*)**

Revision History

| | |
|---|---|
| 6.27.16 & #1.0 | Added (*Contact Project Manager for details.*) |
| 1.17.17 #1.1 | Changed approved by |
| 5.24.17 #1.2 | Updated Policy per EMS PU001 |

# EXHIBIT A

## FEMA
## Federal Procurement Solicitation Terms

A. Funds for this project are derived from federal grants and therefore the successful contractor must comply with federal guidelines. The federal funds appropriated by the Federal Emergency Management Agency (FEMA) will be administered through the State of Florida.

B. **In the event of a conflict between the Federal Requirements listed in this section and other provisions of the Procurement Solicitation, the Federal Requirements will govern and prevail.**

C. **Contract Award**. The contract will be awarded on the basis of the lowest responsive bid submitted by a bidder meeting the requirements of the Procurement Solicitation.

D. **Payment**. Payment shall be based on the unit rates/prices pursuant to the Agreement Fee Schedule. Contractor shall submit invoices covering no more than a 30 day period.

E. **Additional Remedies**. In addition to any other remedies provided for in the Agreement or to which the City may be entitled at law or in equity, in the event of a breach or violation of the Agreement by Contractor, Contractor shall be subject to debarment or suspension from consideration for the award of additional contracts from the City, including but not limited to contracts related to disaster relief or recovery, pursuant to the terms and procedures set forth in the City Code.

F. **Termination for Convenience**. The City may terminate this Agreement at its convenience with or without cause upon written notice of termination to Contractor. In the event of such a termination by the City, the City shall be liable for the payment of all Work properly performed prior to the effective date of termination and for all portions of materials, supplies, services, and facility orders which cannot be cancelled and were placed prior to the effective date of termination and other reasonable costs associated with the termination. Notwithstanding the preceding, under no circumstances shall the City be liable to Contractor for lost profits or overhead for work, materials or services not performed or delivered to the City.

G. **Compliance with State and Federal Reporting Requirements**. Contractor and its subcontractors shall comply with and the Agreement is subject to the requirements and regulations of the Federal Emergency Management Agency and the State of Florida Division of Emergency Management pertaining to reporting.

H. **Civil Rights**
(Applicable to All FEMA Contracts)

The following requirements will apply to the Agreement and any sub-contracts:

(1) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

(2) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities, and which prohibits discrimination in the areas of employment, public accommodations, transportation, telecommunications and government services.

I. **No Obligation by the Federal Government**
(Applicable to all FEMA contracts)

(1) Absent the express written consent by the Federal Government, the Federal Government or FEMA is not a party to the Agreement and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

J. **Access to Records**
(Applicable to all FEMA contracts; DHS Standard Terms and Conditions, v. 3.0 XXV)

(1) The Contractor agrees to provide the City, State, FEMA, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) The Contractor agrees to maintain all books, records, accounts and reports required under the Agreement for a period of not less than three (3) years after the date of termination or expiration of the Agreement, except in the event of litigation or settlement of claims arising from the performance of the Agreement, in which case Contractor agrees to maintain same until the City, the State, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

K. **Procurement of Recovered Materials**
(Applicable to all FEMA contracts, 42 USC s. 6962; 2 CFR Part 200, Appendix II, K; 2 CFR s. 200.322)

(1) In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, http://www.epa.gov/cpg/. The list of EPA-designate items is available at http://www.epa.gov/cpg/products.htm.

L. **DHS Seal, Logo and Flags**
(Applicable to all FEMA contracts; DHS Standard Terms and Conditions, v. 3.0 XXV)

The Contractor shall not use the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA approval.

M. **Compliance with Federal Law, Regulations, and Executive Orders**
(Applicable to all FEMA contracts)

This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives as applicable, including but not limited to:

1. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 USC Sec. 5121, et. seq.
2. Resource Conservation and Recovery Act
3. National Historic Preservation Act
4. Mandatory Standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act

N. **Immigration and Naturalization Act**.
(Applicable to all FEMA contracts)

Contractor shall not knowingly employ unauthorized alien workers in violation of 8 USC §1324a(e) [§74A(e) of the Immigration and Nationality Act] and such employment of unauthorized aliens shall be grounds for unilateral termination of the Contract/Agreement.

O. **Fraud and False or Fraudulent or Related Acts**
(Applicable to all FEMA contracts)

The Contractor acknowledges that 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

P. **Indemnity of Funding Entities**.
(Applicable to all FEMA contracts)

Contractor hereby agrees to indemnify and hold harmless the State of Florida, the Government of the United States of America (including but not limited to the Federal Emergency Management Agency and the Federal Highway Administration) and the City and their officers, agents, employees and elected officials from and against any and all liability, claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees for trial and appeal, and for the preparation of same arising out of Contractor's, its officers, agents, employees and subcontractors' acts or omissions associated with this Agreement.

Q. **Performance and Payment Bonds**.
(Applicable to all FEMA contracts)

If not already required under the Agreement, and if requested by the City, the Contractor shall, prior to the commencement of operations, furnish a Performance and Payment Bond, executed by a surety company authorized to do business in the State of Florida, in the amount of the estimated contract value, which bond shall be conditioned upon the successful completion of all work, labor, services and materials to be provided and furnished under the contract and the payment of all subcontractors, materials and laborers. Said bonds shall be subject to the approval by the City.

R. **Equal Employment Opportunity**
(Applicable to All FEMA Construction Contracts)

During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

S. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**
(Applicable to All FEMA Contracts and Subcontracts; Executive Order 12549, Executive Order 12689, 2 CFR Part 180; 2 CFR Part 3000)

a. By signing this Addendum, the Contractor is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the Contractor to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The Contractor shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

d. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions."

T. **Materials and Supplies**.
(Applicable to all FEMA contracts)

All manufactured and unmanufactured articles, materials and supplies which are acquired for public use under this Contract have been produced in the United States as required by 41 USC §10a, unless it would not be in the public interest or unreasonable in cost.

U. **Clean Air Act and the Federal Water Pollution Control Act**
(Applicable to Contracts in Excess of $150,000)

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

V. **Certification Regarding Use of Contract Funds for Lobbying**

(Byrd Anti-Lobbying (31 USC s. 1352)--Applicable to contracts in excess of $100,000. 2 CFR Part 200, Appendix II)(1)

The Contractor certifies, by signing this Addendum, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(2) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(3) The Contractor also agrees that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

W. **Contract Work Hours and Safety Standards Act**

(Applicable to all FEMA contracts in excess of $100,000 that involve the employment of mechanics or laborers; 29 CFR Part 5; 2 CFR Part 22, Appendix II, E)

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

X. **Davis Bacon Act and Copeland Anti-Kickback Act**

(Applicable to Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program construction contracts in excess of $2,000. Not applicable to other FEMA grant and cooperative agreement programs, including the Public Assistance Program; Davis Bacon Act--40 USC s. 3141-3144 and 3146-3148, 2 CFR Part 200, Appendix II; Copeland Anti-Kickback Act—40 USC s. 3145)
In situations where the Davis-Bacon Act does not apply, neither does the Copeland Anti-Kickback Act.

Compliance with Davis Bacon Act

(1) The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request. Current applicable wage rates will be attached to the Agreement if applicable.

(2) The Contractor agrees that all contractors engaged under contracts in excess of $2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

Compliance with Copeland Anti-Kickback Act

(1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Y. **Rights to Inventions Made Under a Contract or Agreement**
(Applicable if FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement". Does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program. 37 CFR Part 401; 2 CFR Part 200, Appendix II, F).

The contractor acknowledges that it must comply with the requirements of 37 CFR Part 401 and any implementing regulations issued by FEMA.

Z. **Subcontracts**.
(Applicable to all FEMA contracts)

To the extent applicable, the Contractor shall cause the inclusion of the provisions of this Addendum in all subcontracts.

# APPENDIX A

Appendix A contains, Pictures, Site Plans, and relevant Record Drawings.

## CITY OF WEST PALM BEACH (A1)

### Prior Experience

Bidder Company Name: CROM, LLC

Bidder shall provide a detailed summary of prior experience evidencing successful completion a minimum of three (3) water storage tank cleaning and/or repair projects. The Bidder shall provide current names and telephone numbers of agency references for each project provided.

**PROJECT NAME**: Jacksonville JEA

Project Location: 1425 Maitland Road, Jacksonville, FL 32211

Project Description: Complete reservoir rehabilitation, concrete repair, coatings, wall construction, cleanings and inspections.

Project Award Amount: $358,890.00

Final Project Total Amount: $361,410.00 Change Orders: $2,250.00

Scheduled Completion Date: 06/14/2017

Actual Completion Date: 07/25/2017

Owner/Contact: Michael E. Richardson

Name Title

Telephone: ( ) 904-759-4540 Fax: ( ) _____ E-Mail: richme@jea.com

**NOTE:** Include additional pages with the same format if Bidder wants to list other projects as proof of prior experience. List a minimum of three (3) similar projects.

**Failure to fully and accurately provide the information required in Form A1 may result in disqualification of the Bid. All decisions of the City are final.**

## CITY OF WEST PALM BEACH (A1)

### Prior Experience

Bidder Company Name: CROM, LLC

Bidder shall provide a detailed summary of prior experience evidencing successful completion a minimum of three (3) water storage tank cleaning and/or repair projects. The Bidder shall provide current names and telephone numbers of agency references for each project provided.

**PROJECT NAME:** City of Deltona

Project Location: 255 Enterprise Road, Deltona, FL. 32725

Project Description:

Four year maintenance agreement with the city for 10 concrete tanks, inspections and cleanings, materials replacement, concrete repair and coating.

Project Award Amount: $275,000.00

Final Project Total Amount: $451,828.00

Scheduled Completion Date: 09/30/2018

Actual Completion Date: 10/01/2018

Owner/Contact: Shane Churney

Name Title

Telephone: ( ) 561-822-2290 Fax: ( ) _____ E-Mail: schurney@deltona.gov

**NOTE:** Include additional pages with the same format if Bidder wants to list other projects as proof of prior experience. List a minimum of three (3) similar projects.

**Failure to fully and accurately provide the information required in Form A1 may result in disqualification of the Bid. All decisions of the City are final.**

WEST PALM BEACH

# CITY OF WEST PALM BEACH (A1)

## Prior Experience

Bidder Company Name: CROM, LLC

Bidder shall provide a detailed summary of prior experience evidencing successful completion a minimum of three (3) water storage tank cleaning and/or repair projects. The Bidder shall provide current names and telephone numbers of agency references for each project provided.

**PROJECT NAME**: City of West Palm Beach

Project Location: Multiple Locations

Project Description:

Cleanings, inspections, materials replacement, concrete repair and disinfections.

Project Award Amount: $750,000.00

Final Project Award Amount: $1,136,291.86

Scheduled Completion Date: 04/02/2018

Actual Completion Date: 11/01/2018

Owner/Contact: City of West Palm Beach, Sandra Feliciano

Name Title

Telephone: ( ) 561-350-1885 Fax: ( ) _____ E-Mail: sfeliciano@wpb.org

**NOTE:** Include additional pages with the same format if Bidder wants to list other projects as proof of prior experience. List a minimum of three (3) similar projects.

**Failure to fully and accurately provide the information required in Form A1 may result in disqualification of the Bid. All decisions of the City are final.**

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B1)

## BID PACKAGE COVER SHEET

ITB 18-19-115 Project Title: Water Storage Tank Cleaning and Repair Services

Bidder Company Name: CROM, LLC

The following documents must be included in the Bid package:

| | | |
|---|---|---|
| x | 1. | Prior Experience (A1) |
| x | 2. | Bid Package Cover Sheet. (Form B1) |
| x | 3. | Bid (Form B2) **Must be signed** |
| x | 4. | Schedule of Bid Prices (Form B3) **Must be signed** |
| x | 5. | Contractor Verification (Form B6). Check the license and insurance requirements to ensure that you will comply and attach copies of current licenses. |
| x | 6. | Reference List (Form B7) |
| x | 7. | Affidavit of Prime Bidder re Non-collusion (Form B8). Be sure to sign and notarize the signature. |
| x | 8. | Drug Free Certification (Form B9) |
| x | 9. | Equal Benefits Certification (Form B17) |
| x | 10. | Scrutinized Corporation Certification (Form B18) |
| x | 11. | Public Utilities Environmental Policy Receipt (if applicable, for utility project) (Form B19) |
| x | 12. | Copies of licenses, certifications and registrations |

Clearly mark the outside lower left corner of the Envelope with the firm name, Invitation to Bid number and title, and the date and time for the bid closing deadline.

**Submit one (1) original, one (1) electronic version and two (2) photocopies of your Bid package.**

**AVOID BID REJECTION:**
**All bids must be submitted on the provided Bid forms (A1, B1, B2, B3, B6, B7, B8, B9, B17, B18, B19).**
**Forms B2 and B3 must be signed in ink by an officer authorized to bind the Bidder.**
**All Forms must be fully completed.**

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B2)

## BID

**ITB 18-19-115**

**Proposal of:** CROM, LLC
*(Bidder Company Name)*

Bid Amount: $ See Schedule of Bid Items Form B3

See Schedule of Bid Items Form B3
*(Write Dollar Figure Here)*

The Bidder agrees to furnish all labor, equipment, tools, materials, manufactured articles, supplies, documents, permits, transportation and services, including fuel, power, water and essential communications, to be provided by Contractor to fulfill Contractor's obligations under the contract and shall execute and complete, to the satisfaction of Owner and in accordance with the terms and conditions of the Contract Documents, all work.

The undersigned Bidder hereby declares that:

1. No Lobbying. Bidder acknowledges that contact by Bidder, or anyone representing a Proposer, regarding this ITB with the Mayor, any City Commissioner, officer, City employee, other than an employee of the West Palm Beach Procurement Division, is grounds for disqualification.

2. This Bid is made in good faith, without collusion or fraud and is fair and competitive in all respects.

3. The Bidder has carefully and to his full satisfaction examined the Invitation to Bid, and Bidder has read all issued addenda issued.

4. Bidder furthermore agrees that, in case of failure on his part to execute a Contract and provide all required documents within ten (10) calendar days of receipt of the Contract for execution, the City may withdraw the offer and contract with another bidder..

5. Small Business participation for this project is 0%.

6. Bidder shall be responsible for all permitting fees and utility service connection fees.

7. All debris is to be legally disposed of at a licensed disposal site in accordance with city, state, and federal standards.

8. The following officer, director or agent of the Bidder is also an employee of the City of West Palm Beach:

*Name* *Address*

N/A

9. The following employee(s) of the City of West Palm Beach hold, either directly or indirectly, an interest of 10% or more of Bidder or its affiliates or subsidiaries:

*Name* *Address*

N/A

10. Bidder certifies that it has not been placed on the Convicted Vendor List maintained by the State of Florida for a period of 36 months from the date of this Bid.

11. Bidder certifies that it has not been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

12. Bidder certifies that Bidder's company, principals, or owners are not listed on the Scrutinized Companies that Boycott Israel List and is not engaged in a boycott of Israel. If this Bid is equal to or greater than One Million Dollars ($1,000,000), Bidder further certifies that Bidder's company, principals, or owners are not listed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba.

13. Bidder certifies that it has not been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 yea

**14. Bidder acknowledges that ADDENDA NO(S). 1 have been RECEIVED and are ATTACHED HERETO and are signed by a duly authorized officer of Bidder.**

**15. By signing and submitting this Bid, Bidder represents that all Bid Forms are fully complete and accurate.**

**16. Bidder acknowledges that the Bid may be rejected if all Bid Forms are not fully complete, not accurate or if forms are not signed by properly authorized signatures where required.**

Bidder Company Name: CROM, LLC

Business Address: (Street, City, State, Zip Code) 250 SW 36th Terrace
Gainesville, FL 32607

State of Incorporated: FL Telephone: 352.372.3436 Fax: 352.372.6209

Email: Ccradmin@cromcorp.com

**BIDDER**:

*Signature of Official authorized to bind Bidder.*
*(Sign in **blue** ink)*

Print Name: ROBERT OYENARTE

Title: PRESIDENT

Date: 3/26/2019

**Failure to fully complete and sign this Bid Form may result in rejection of the Bid.**

WEST PALM BEACH

## CITY OF WEST PALM

(B3)

## SCHEDULE OF BID ITEMS

**ITB 18-19-115**
**PROJECT TITLE: Water Storage Tank Cleaning and Repair Services**

**PLEASE SEE EXCEL WORKSHEET ATTACHED.**

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B6)

**ITB 18-19-115**

## CONTRACTOR VERIFICATION FORM

PRIME BIDDER:

Name of Firm: CROM, LLC

Address: 250 SW 36th Terrace
Gainesville, FL 32607

Telephone: ( ) 352.372.3436

Fax: ( ) 352.372.6209

GENERAL CONTRACTOR OF RECORD:

Name: Robert G. Oyenarte

Address: 250 SW 36th Terrace
Gainesville, FL 32607

Email: Ccradmin@cromcorp.com

State License # CGC1517301 **(ATTACH COPY)**

County License # 36596 **(ATTACH COPY)**

Type of License: General Contractors

Unlimited Yes (yes/no)

If "NO", Limited to what trade? N/A

Is the General Contractor a full-time employee of Prime Bidder?

X Yes ____ No

Will the General Contractor be in responsible charge of the work performed and installed under this contract?

X Yes ____ No

City License: (**COPY OF CITY REGISTRATION OR BUSINESS TAX RECEIPT –MUST BE OBTAINED PRIOR TO CONTRACT EXECUTION** – *Maybe obtained from City Construction Services* )

***Failure to fully or accurately complete this form may be cause for rejection of the bid.***

WEST PALM BEACH

## CITY OF WEST PALM BEACH (B7)

**ITB 18-19-115**

**LIST OF REFERENCES**

1. Owner's Name & Address: City of West Palm Beach
PO Box 3366 West Palm Beach, FL. 33402
Project: City of Palm Beach
Contact Person Sandra Feliciano
Telephone: ( ) 561-350-1885 Fax: ( ) _____ E-Mail: sfeliciano@wpb.org

2. Owner's Name & Address: City of Deltona
255 Enterprise Rd. Deltona, FL. 32725
Project: City of Deltona
Contact Person Shane Churney
Telephone: ( ) 386-871-7432 Fax: ( ) _____ E-Mail: schurney@deltona.gov

3. Owner's Name & Address: Jacksonville, FL
1425 Maitland Rd. Jacksonville, FL. 32725
Project: Arlington WTP
Contact Person Micheal E. Richardson
Telephone: ( ) 904-759-4540 Fax: ( ) _____ E-Mail: richme@jea.com

4. Owner's Name & Address: Arcadia, FL
9415 Town Center Parkway, Lakewood Ranch, FL. 34202
Project: Peace River Manasota Regional Water Supply Authority
Contact Person Tom Dobbs
Telephone: ( ) 914-316-1776 ext. 113 Fax: ( ) _____ E-Mail: N/A

WEST PALM BEACH

**(B8)**

## AFFIDAVIT OF PRIME BIDDER
### Re Non-collusion and Public Entity Crime

State of Florida }

County of Alachua }

ROBERT OLENARTE, being first duly sworn, disposes and says that:
(Name)

1. I am the PRESIDENT of CROM, LLC the
(Title) (Name of Company)
Bidder that has submitted the attached bid;

2. I am fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

4. Neither the Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham Bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of West Palm Beach or any person interested in the proposed Contract; and

5. The following Officer, director or agent of Bidder is also an employee of the City of West Palm Beach: None (if none, write "None").

6. The following employees of the City of West Palm Beach own, directly or indirectly, an interest of 10% or more in Bidder firm or any of its affiliates or subsidiaries: None (if none, write "None").

7. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

8. Neither the Bidder nor any officer, director, partner, shareholder, employee, member or agent, who is active in the management of Bidder, or any affiliate or subsidiary of Bidder has been convicted of a public entity crime or action regarding antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation with respect to any bid or contract for goods or services to be provided to any public entity, or has been listed on the state Convicted Vendor List, within thirty-six months prior to the date of Bidder's Bid.

(Signed) _____

(Print Name) ROBERT OLENARTE

(Title) PRESIDENT

The foregoing Affidavit of Bidder regarding Non-Collusion and Public Entity Crime was acknowledged before me this 3/26/2019 *(Date)*

by: - signed By Robert Co. Oyeante
Cody A H Galloway

X who is personally known to me or

_____who has produced _____ as identification

and who did /(did not) take an oath.

Notary Public Cody A H Galloway

Print Name: Cody A H Galloway

Commission No. 5/11/2019 - # 229521

CODY A.H. GALLOWAY
Notary Public - State of Florida
Commission # FF 229521
My Comm. Expires May 11, 2019

WEST PALM BEACH

CITY OF WEST PALM BEACH **(B9)**

## DRUG FREE WORKPLACE CERTIFICATION

The undersigned Bidder, in accordance with Florida Statute 287.087 hereby certifies that

CROM, LLC does:

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under this bid a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities, or contractual services that are under bid, the employee will abide by the terms of the statement, and will notify the employer of any conviction of, or plea of guilty, or *nolo contendre* to any violation of Chapter 1893, or of any controlled substance law of the United States, or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance, or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.

6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Authorized Signature

ROBERT OYENARTE

Print Name

3/26/2019

Date

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B17)

## ITB 18-19-115

## Equal Benefits Certification

**Equal Benefits Ordinance**. Section 66-9 of the City's Code of Ordinances provides that, with limited exceptions, when contracting for goods, services or construction in an amount of $50,000 or more, with persons or businesses with five or more employees that also provide benefits to employees' spouses and dependents, the City shall contract only with those persons or businesses that provide equal benefits to employees' domestic partners.

**Check only one box below:**

☒ **1.** The firm certifies and represents that it will comply during the entire term of the contract with Sec. 66-9 of the City's Code of Ordinances by providing benefits to employees' domestic partners equal to those benefits provided to employees' spouses and dependents; or

☐ **2.** The firm does not need to comply with Sec. 66-9 of the City's Code of Ordinances because of an allowable exemption: (Check exemptions that apply):

____ The firm's price for the contract term awarded is $50,000 or less.
____ The firm employs less than five (5) employees.
____ The firm does not provide benefits to employees' spouses nor employees' dependents.
____ The firm is a government entity.
____ The contract is for the sale or lease of property.
____ Compliance would violate grant requirements or regulations of federal / state law.
____ The contract is an emergency procurement or necessary to respond to an emergency situation.

☐ **3.** The firm does not comply with Sec. 66-9 of the City's Code of Ordinances and does not have an allowable exemption.

I, Robert Ayenarte, President
(Print Name of Authorized Officer) (Title)

of CROM, LLC
(Name of Firm)

hereby attest that I have the authority to sign this certification on behalf of the firm and certify that the above information is true, complete and correct.

Signature: _____

STATE OF Florida }

COUNTY OF Alachua }

Sworn to and subscribed before me this 26th day of March, 2019, by Robert G. Ayearte, as an act of CROM, LLC (*firm*), who is personally known to me or produced the following identification: N/A.

Notary Signature: _____

Print Notary Name: Cody A.H. Galloway

Commission No. #229521

[Seal]
CODY A.H. GALLOWAY
Notary Public - State of Florida
Commission # FF 229521
My Comm. Expires May 11, 2019

WEST PALM BEACH

# CITY OF WEST PALM BEACH (B18)

## SCRUTINIZED CORPORATION CERTIFICATION

I, Robert Olivarte, President
(Print Name of Authorized Officer) (Title)

of CROM, LLC
(Name of Firm)

hereby attest that:

1. For a bid of any amount, the company and its principals are not on the Scrutinized Companies that Boycott Israel List maintained by the State of Florida and do not engage in any boycott of Israel;

2. For a bid of One Million Dollars or more, the company and its principals certify that they:

   a. are not on the Scrutinized Companies with Activities in Sudan List;

   b. are not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;

   c. do not engage in business in Syria or Cuba.

3. I have the authority to sign this certification on behalf of the company and certify that the above information is true, complete and correct.

Signature: _____

STATE OF Florida }

COUNTY OF Alachua }

Sworn to and subscribed before me this 26th day of March, 2019, by Robert O. Olivarte, as an act of CROM, LLC (*firm*), who is personally known to me or produced the following identification N/A.

Notary Signature: _____

Print Notary Name: Cody AH Galloway

Commission No. #229521

CODY A.H. GALLOWAY
Notary Public - State of Florida
Commission # FF 229521
My Comm. Expires May 11, 2019

# CITY OF WEST PALM BEACH (B19)

## PUBLIC UTILITIES DEPARTMENT
## ENVIRONMENTAL POLICY

*This form must be included with any Bid for work involving the City's water, waste water or storm water systems.*

The Public Utilities Department (Utility), as a public service provider for source water conveyance, processing and distribution of water, the conveyance and treatment of sanitary waste, the operation of the storm water system and flood protection, and customer billing and service- have a responsibility to take a leadership role in conducting all operational activities in a manner that protects the environment, as we provide for the health and safety of our employees, customers, and the general public. We have a duty to balance social, environmental and economic factors to ensure the continued success and sustainable management of the Utility.

In keeping with this vision and our responsibility to protect and conserve the environment, we are committed to exceed **environmental compliance** and:

**W**ork together for **continual improvement**

**A**void negative environmental impacts

**T**ransform our Utility into an **environmental & safety leader**

**E**nhance **communication** of our vision

**R**e-evaluate and adjust our everyday tasks to **prevent pollution**

**CONTRACTOR/CONSULTANT COMMUNICATION:**

I, ROBERT OYENARTE (*Print first and last name*) **from** CROM, LLC (*Print name of company*), **acknowledge that the City of West Palm Beach Public Utilities Department has communicated their ISO 14001 Environmental Policy with me on** 2-22-19 (*Print date*).

(*Contact Project Manager for details.*)

X _____

(***Signature of contractor/consultant or representative***)

Revision History

| | |
|---|---|
| 6.27.16 & #1.0 | Added (*Contact Project Manager for details.*) |
| 1.17.17 #1.1 | Changed approved by |
| 5.24.17 #1.2 | Updated Policy per EMS PU001 |

*City of West Palm Beach* **(B3)**

## SCHEDULE OF BID ITEMS

**ITB 18-19-115**
**PROJECT TITLE: Water Storage Tank Cleaning and Repair Services**

| Item No. | Description | Unit | Quantity | Unit Price | Total Price |
|---|---|---|---|---|---|
| 0 | General Conditions, Bonds, Insurance, and Project Administration | Lump Sum | 1 | $9,640.00 | $ 9,640.00 |
| 1 | WTP 3 MG Storage Tank | | | | |
| 1.1 | Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $13,590.00 | $ 13,590.00 |
| 2 | WTP 5 MG Storage Tank | | | | |
| 2.1 | Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $14,400.00 | $ 14,400.00 |
| 3 | Ibis Re-Pump Station Storage Tank | | | | |
| 3.1 | Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $10,520.00 | $ 10,520.00 |
| 4 | Ibis Re-Pump Station Hydro Pneumatic Tank | | | | |
| 4.1 | Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $3,900.00 | $ 3,900.00 |
| 5 | Cumberland Re-Pump Station Storage Tank | | | | |
| 5.1 | Storage Tank Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $10,520.00 | $ 10,520.00 |
| 6 | St. Mary's Re-Pump Station Storage Tank | | | | |
| 6.1 | Storage Tank Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $10,520.00 | $ 10,520.00 |
| 7 | Valley Forge Re-Pump Station Storage Tank | | | | |
| 7.1 | Storage Tank Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $11,890.00 | $ 11,890.00 |
| 8 | Palm Beach Re-Pump Station Storage Tank | | | | |
| 8.1 | Storage Tank Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $11,500.00 | $ 11,500.00 |
| 9 | Kaye Street Re-Pump Station Storage Tank | | | | |
| 9.1 | Storage Tank Cleaning and Disinfection - In the Dry | Lump Sum | 1 | $10,520.00 | $ 10,520.00 |
| **Total Bid - Entire Project (Bid Items 0 - 9.1)** | | | | **$** | **107,000.00** |

| Item No. | Description | Unit | Unit Price |
|---|---|---|---|
| | **Owner Directed Repair Work** | | |
| A | On-Call Labor Rates - Crew (One Supervisor and Two Skilled Technicians) | | |
| A.1 | Non-Emergency - Mobilization (Response within 48 hours) | Lump Sum | $ 4,400.00 |
| A.2 | Non-Emergency - Hourly | HR | $ 375.00 |
| A.3 | Non-Emergency - Weekend/Overtime | HR | $ 562.50 |
| A.4 | Emergency - Mobilization (Response within 24 hours) | Lump Sum | $ 5,400.00 |
| A.5 | Emergency - Hourly | HR | $ 562.50 |
| A.6 | Emergency - Weekend/Overtime | HR | $ 562.50 |
| A.7 | Holiday - Mobilization (Response within 48 hours) | Lump Sum | $ 5,400.00 |
| A.8 | Holiday - Hourly | HR | $ 562.50 |
| A.9 | Holiday - Weekend/Overtime | HR | $ 562.50 |
| B | On-Call Labor Rates - Project Management | | |
| B.1 | Project Manager | HR | $ 160.00 |
| B.2 | Project Engineer | HR | $ 275.00 |
| | **Total Owner Directed Repair Work - (Bid Items A.1 - B.2)** | | **$ 18,822.50** |
| | | | |
| C | Materials Mark-up | % | 15% |

**Bidder Company Name: CROM, LLC**

**Signature of Official authorized to bind Bidder:**

**Print Name:** ROBERT OYENARTE

**Title:** PRESIDENT

**Date:** 3/26/2019

Failure to fully complete and sign this Bid Form may result in rejection of the Bid.

**END SCHEDULE OF BID ITEMS**

**BIDDERS: THE CITY HAS PROVIDED AN ELECTRONIC SPREADSHEET FOR BID ITEM TABULATION. IT IS MANDATORY THAT ALL BIDDERS PROVIDE BOTH A SIGNED PAPER BID TABULATION AND ELECTRONIC BID TABULATION. THE ELECTRONIC BID TABULATION SHALL BE SUBMITTED WITH THE PAPER BID TABULATION BY MEANS OF COMPACT DISK, FLASH DRIVE, OR OTHER DIGINAL DATA STORAGE DEVICE. PAPER BID TABULATION AND ELECTRONIC BID TABULATION SHALL BE MATERIALLY CONSISTENT AND CONTAIN THE SAME INFORMATION. IN CASE OF DISCREPANCY, THE SIGNED PAPER BID TABULATION SHALL PREVAIL. FAILURE TO SUBMIT AND ELECTRONIC COPY/VERSION OF THE PROVIDED BID TABULATION SHALL BE CAUSE FOR REJECTION OF THE BID.**

WEST PALM BEACH

Purchasing Department

**Addendum 1**
**ITB 18-19-115**
**March 18, 2019**

# Water Storage Tank Cleaning and Repair

Each recipient of this Addendum acknowledges all of the provisions set forth in the Invitation to Bid (ITB) and agrees to be bound by the terms thereof.

This addendum shall modify, clarify, change or add information and become part of the above referenced ITB.

**This Addendum shall provide the following information:**

- Clarifications
- Questions and Answers

**The following documents are included with this addendum:**

- Addendum 1 ITB 18-19-115
  - Tank Inspection Reports

## Clarifications

**Clarification 1:** Maintenance of Traffic (MOT) will be required when work is done at the Palm Beach Re-Pump Station Storage Tank. MOT to be performed by a third party coordinated by the City.

**Clarification 2:** Contractor(s) will have to work with the City to properly coordinate any work being conducted at the Palm Beach Re-Pump Station Storage Tank due to the strict requirements in place at the Town of Palm Beach to obtain the necessary permits, for scheduling work during allowable working hours, fulfilling MOT requirements, etc.

**Clarification 3:** Labor rates and materials markup percentage will be used to price additional work that may be requested as needed during the term of the Contract.

**Clarification 4:** Lump Sump prices to clean the individual tanks shall include the cost for mobilization.

**Clarification 5:** Bidders may provide multiple mobilization prices on a separate form or sheet if it is anticipated that different types of as-needed work will require different mobilization charges.

401 CLEMATIS STREET
P.O. BOX 3366
WEST PALM BEACH, FL 33401
561.822.2100

**Clarification 6:** The intent of this Bid is to award Contracts to multiple vendors dependent upon the evaluation of the bids received.

**Clarification 7:** High Visibility attire is required on all City jobsites

**Questions and Answers**

**Question 1: How will the additional as-needed work be handled?**

**Answer**
Additional as-needed work will be handled through separate Work Orders under the Master Contract with Work Order pricing at the rates specified in the Contract.

**Question 2: Do you know which locations may have lean in the paint requiring soil sampling and proper handling?**

**Answer**
The Valley Forge Re-Pump Station Storage Tank does may have exterior lead-based paint. However, soil sampling and other lead paint handling measures will not be required until work is being requested on the outside of the storage tank.

**Question 3: Will you provide the last inspection report for each tank?**

**Answer**
Yes, the latest inspection reports have been provided and are included as part of the addendum

**Question 4: Where does the discharge water go after cleaning?**

**Answer**
The discharge water shall be placed in the on site sanitary sewer after cleaning

**All of the other information remains the same.**

Proposers must acknowledge receipt of this Addendum 1 in the space provided below. This Addendum forms an integral part of the ITB documents and therefore must be executed. *Failure to return this addendum with your proposal submittal may be cause for disqualification.*

Issued By: City of West Palm Beach
Procurement Division
March 18, 2019

Signed By: _____
Nathaniel Rubel
Procurement Supervisor

PROPOSER: CBOM, LLC

Signed By: _____

Print Name: ROBERT OJENARTE

Title: PRESIDENT

Date: 3/26/2019

End of Addendum 1

# EXCEPTION(S) / CLARIFICATION(S)

**Master Water Storage Tank Cleaning and Repair Services**
**West Palm Beach, Florida**
**Bid No. 18-19-115**
**CCR PR No. 19-074**

**Date Submitted: March 27, 2019**

1. **Reference: Page 23; Section 2.2**

   **A.** Licenses / Certifications / Receipts. The Bidder will be required to have at the time of bid submittal, the following current license(s)/certification(s):

   1) General Contractor's License

   2) American Petroleum Institute (API) Certification for Steel Tanks and Hydropneumatic

2. **Exception(s) / Clarification(s)**

   **A.** 2) CROM Coatings and Restorations, a Division of CROM, LLC is not API Certified. We do not believe this certification is necessary for the scope of work included in this contract. CROM has been cleaning and repairing tanks for over 60 years. Additionally, we utilize Tank Rehab for work involving steel tanks. Tank Rehab specializes in the cleaning, inspection, repair, and disinfection of steel tanks. Tank Rehab has over 10 years of experience performing this type of work.

You payment was processed. Print this tax receipt for your records. It was also sent to stillman@cromcorp.com

# Online Business Tax Receipt(1)

Business Name **CROM, LLC**

Business Tax ID **36596**

This constitutes your business tax receipt for 10/1/2018 - 9/30/2019.

Your business tax(es) for the current fiscal year ***10/1/2018 - 9/30/2019*** are as follows:

## Business Categories

| ID | Service Name | Tax Amount | Explanation of Calculations |
|---|---|---|---|
| 1000 | STATE LICENSE/CERTIFICATION REQUIRED | $0.00 | |
| 1360 | CONTRACTOR-GENERAL-UNLIMITED | $131.25 | Business category flat fee of $131.25 |
| 1940 | ENGINEER | $105.00 | Per item fee $105.00. Value submitted for taxation is 1. |
| **** | Payment | ($236.25) | Posted on 9/12/2018 |
| | **TOTAL DUE:** | $0.00 | |

Please note that the maximum charge for any single service is $525

Amount Due on ***Tuesday, October 02, 2018*** is **$0.00**

(1) This page will serve as your business tax receipt for the fiscal year 10/1/2018 - 9/30/2019.

Payments must be time-stamped by 11:59 pm on Monday, October 01, 2018 in order to avoid late fees.

Please, note that a home occupation permit may be required for this location, someone will contact you upon review of the information

RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY

Florida dbpr

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

## OYENARTE, ROBERT GLENN

CROM, LLC
250 SW 36TH TERRACE
GAINESVILLE FL 32607

**LICENSE NUMBER: CGC1517301**

**EXPIRATION DATE: AUGUST 31, 2020**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Ron DeSantis, Governor

Halsey Beshears, Secretary

Florida dbpr

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## BOARD OF PROFESSIONAL ENGINEERS

THE PROFESSIONAL ENGINEER HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 471, FLORIDA STATUTES

## OYENARTE, ROBERT GLENN

250 SW 36TH TERRACE
GAINESVILLE FL 32607

**LICENSE NUMBER: PE59444**

**EXPIRATION DATE: FEBRUARY 28, 2021**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

RESOLUTION OF THE MANAGERS
OF CROM COATINGS AND RESTORATIONS, A DIVISION OF CROM, LLC
A FLORIDA LIMITED LIABILITY COMPANY

To: _____

I HEREBY CERTIFY that the following is a true and correct copy of a resolution adopted by unanimous written consent of the Managers of Crom, LLC, a limited liability company organized under the laws of the State of Florida, on the 19th day of March 2014, updated on January 17, 2019, and that the said resolution has been entered upon the regular minute book of this company and is in accordance with the operating agreement that is now in full force and effect:

> "RESOLVED THAT the following individuals are authorized to sign bid proposals and contracts for Crom Coatings and Restorations, a division of Crom, LLC, as identified below; and further to include in such bid proposals that certificate of non-collusion required by law as the act and deed of such company, and for all inaccuracies of misstatements in such certificate this company shall be liable under the penalty of perjury."

I FURTHER CERTIFY that the names of the persons holding titles referred to in the foregoing resolution are as follows:

| Name | Title | Signing Authority |
|---|---|---|
| Robert G. Oyenarte | President/Division President | Bid Proposals & Contracts |
| Jeffrey A. Pomeroy | Chief Financial Officer | Bid Proposals & Contracts |
| Talmadge B. Mincey | President | Bid Proposals & Contracts |
| Joe Clint Jenkins III | Division Vice President<br>Assistant Secretary | Bid Proposals & Contracts |
| Clifford J. Dykes | Division Vice President<br>Assistant Secretary | Bid Proposals & Contracts |
| Alexander D. Ciasca | Division Assistant Secretary | Bid Proposals & Contracts |
| Stephen M. Crawford | Division Assistant Secretary | Bid Proposals & Contracts |
| Clemente J. Pichardo | Division Assistant Secretary | Bid Proposals Only |

By: _____
Robert G. Oyenarte

Title: President/Division President

Date: January 17, 2019

ACORD®

# CERTIFICATE OF LIABILITY INSURANCE

12/31/2019

DATE (MM/DD/YYYY) 2/13/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | |
|---|---|
| PRODUCER Lockton Companies<br>444 W. 47th Street, Suite 900<br>Kansas City MO 64112-1906<br>(816) 960-9000 | CONTACT NAME:<br>PHONE (A/C, No, Ext):<br>FAX (A/C, No):<br>E-MAIL ADDRESS: |
| INSURED 1378138<br>CROM COATINGS AND RESTORATIONS,<br>A DIVISION OF CROM, LLC<br>250 SW 36TH TERRACE<br>GAINESVILLE FL 32607 | INSURER(S) AFFORDING COVERAGE — NAIC #<br>INSURER A : Zurich American Insurance Company — 16535<br>INSURER B : St. Paul Fire and Marine Insurance Company — 24767<br>INSURER C : Liberty Mutual Insurance Company — 23043<br>INSURER D :<br>INSURER E :<br>INSURER F : |

**COVERAGES** **CERTIFICATE NUMBER:** 15889888 **REVISION NUMBER:** XXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | [X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS-MADE [X] OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [X] PRO-JECT [ ] LOC<br>[ ] OTHER: | N | N | GLO008374504 | 12/31/2018 | 12/31/2019 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG<br>$ | $ 1,000,000<br>$ 300,000<br>$ 10,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000<br>$ |
| A | AUTOMOBILE LIABILITY<br>[X] ANY AUTO<br>[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS<br>[X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY<br>[X] Hired Phys Dmg | N | N | BAP008374404 | 12/31/2018 | 12/31/2019 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident)<br>Comp/Coll Deds | $ 1,000,000<br>$ XXXXXXX<br>$ XXXXXXX<br>$ XXXXXXX<br>$ 2,500 |
| B | [ ] UMBRELLA LIAB [X] OCCUR<br>[X] EXCESS LIAB [ ] CLAIMS-MADE<br>[ ] DED [X] RETENTION $ 10,000 | N | N | ZUP12P5926118NF | 12/31/2018 | 12/31/2019 | EACH OCCURRENCE<br>AGGREGATE<br>$ | $ 1,000,000<br>$ 1,000,000<br>$ XXXXXXX |
| C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) Y/N [N] N/A<br>If yes, describe under DESCRIPTION OF OPERATIONS below | | N | WC5469956018 | 12/31/2018 | 12/31/2019 | [X] PER STATUTE [ ] OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$ 1,000,000<br>$ 1,000,000<br>$ 1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER**

15889888
FOR YOUR INFORMATION

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Joseph M Agnello

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**CITY OF WEST PALM BEACH**

**AMENDMENT NO. 1**
[Term Extension]

Agreement / Contract Name: **Master Water Storage Tank Cleaning and Repair Services**

Agreement / Contract Date: **June 4, 2019**

Contract No.**20696.**004

THIS AMENDMENT **No.1** ("Amendment") is entered into by and between the **CITY OF WEST PALM BEACH** ("City") and **CROM, LLC.** ("Contractor/Consultant/Provider/Supplier" referred to as "Contractor "for convenience).

WHEREAS, the parties desire to extend the Agreement / Contract, and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

1. **Term.** The term of the Agreement/Contract is hereby extended for an additional **two (2)** year period expiring **June 3, 2024**. Extension terms, conditions and rates shall be the same as the original Agreement / Contract.

2. **Effect of Amendment**. Except to the extent the Agreement / Contract expiration date is modified by this Amendment, the terms and provisions of the Agreement / Contract, as may be previously amended, shall remain unmodified and in full force and effect. In the event of a conflict between the terms of the Agreement / Contract, as may be previously amended and the terms of this Amendment, the terms of this Amendment shall govern and prevail.

Contractor:
**CROM, LLC.**

Robert G Oyenarte
By: _____

Print Name: Robert Oyenarte

Title: President

**CITY OF WEST PALM BEACH**

By: _____
Keith A. James, Mayor

Attest: _____
City Clerk

Dated: 2/22, 2022

CITY ATTORNEY'S OFFICE
Approved as to form and legal sufficiency
By: K Denise Haire

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-317 | **Version:** | 1 | **Name:** | |
| **Type:** | Contract | | | **Status:** | Multi-Year Contract |
| **File created:** | 5/15/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Approve a multi-year interlocal agreement between the City of Cocoa and the City of Rockledge for School Crossing Guard services for the school year commencing August 10, 2023, and end May 24, 2024.(Chief of Police) | | | | |
| **Sponsors:** | | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | 2023 Rockledge Crossing Guard.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 15, 2023
Agenda Date: June 6, 2023
Prepared By: Charlene Jenkins-Catechis, Administrative Secretary
Through: Evander Collier, IV, Chief of Police
Requested Action:
Approve a multi-year interlocal agreement between the City of Cocoa and the City of Rockledge for School Crossing Guard services for the school year commencing August 10, 2023, and end May 24, 2024.

## BACKGROUND:

Pursuant to Section 163.01, Florida Statues, Cocoa, and Rockledge agree that the safety of the students living in their cities is a matter of great public concern. To that end, the City of Rockledge will perform crossing guard services for the students crossing from and to the Cities of Cocoa and Rockledge to attend McNair Middle School and Emma Jewel Charter Academy. In turn, the City of Cocoa will provide the City of Rockledge with financial assistance to offset costs associated with said crossing guard services. This agreement was originally initiated in 2006 and it is desired by both parties to renew and continue this service agreement beginning August 10, 2023, and end May 24, 2024, which crosses two fiscal years.

## STRATEGIC PLAN CONNECTION:

Public Safety.

## BUDGETARY IMPACT:

| | |
|---|---|
| Budgeted | Yes |
| If not budgeted, is amendment/transfer attached? | Choose an item. |

| | |
|---|---|
| FY2024 Budget | |
| Amount Requested | $5,900.00 |
| Account Number | 001-2100-521.34-00 |
| Account Name | Contract Services |

## PREVIOUS ACTION:

Council previously approved a similar agenda item on July 12. 2022, Item 22-340.

## RECOMMENDED MOTION:

Approve a multi-year interlocal agreement between the City of Cocoa and the City of Rockledge for School Crossing Guard services for the school year commencing August 10, 2023, and end May 24, 2024.

**INTERLOCAL AGREEMENT BETWEEN**
**THE CITIES OF COCOA AND ROCKLEDGE**
**CROSSING GUARD SERVICES**
**(AT INTERSECTION OF FISKE BOULEVARD AND ROSA L. JONES STREET)**

**THIS INTERLOCAL AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 2023, by and between the **CITY OF COCOA**, a Florida municipal corporation located at 65 Stone Street, Cocoa, Florida 32922 (hereinafter "Cocoa") and **CITY OF ROCKLEDGE**, a Florida municipal corporation located at 1600 Huntington Lane, Rockledge, Florida 32955 (hereinafter "Rockledge").

**W I T N E S S E T H:**

**WHEREAS**, this Agreement is authorized pursuant to Section 163.01, Florida Statutes; and

**WHEREAS**, Cocoa and Rockledge agree that the safety of the students living in their cities is a matter of great public concern; and

**WHEREAS,** Cocoa has traditionally provided for crossing guard services at the intersection of Fiske Boulevard and Rosa L. Jones Street; and

**WHEREAS,** due to circumstances beyond its control, Cocoa is unable to retain the required personnel to sufficiently staff this crossing guard location; and

**WHEREAS,** students living in Cocoa and Rockledge attend Ronald McNair Middle School located in Rockledge on Rosa L. Jones Street; and

**WHEREAS,** in the spirit of intergovernmental cooperation and assistance, Rockledge agrees to provide a state certified school crossing guard at the intersection of Fiske Boulevard and Rosa L. Jones Street for the purpose of providing for student's safe travel to and from Ronald McNair Middle School; and

**WHEREAS,** Cocoa agrees to provide Rockledge with financial assistance as set forth herein to offset Rockledge's costs; and

**WHEREAS**, Cocoa and Rockledge deem it necessary for the benefit of the public health, safety and welfare to enter into this Interlocal Agreement.

**NOW, THEREFORE**, in consideration of the covenants and agreement

hereinafter set forth, to be kept and performed by both parties, Cocoa and Rockledge agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated herein by reference as a material part of this Agreement.

2. **CONDITIONS PRECEDENT.** All rights, obligations and liabilities of the parties under this Agreement shall be subject to the satisfaction of the following conditions precedent:

2.1 The complete execution of this Agreement by the parties.

2.2 The approval of this Agreement by both the City Council of Cocoa and the City Council of Rockledge.

2.3 The filing of this Agreement with the Clerk of the Circuit Court in and for Brevard County, Florida, pursuant to Section 163.01(11), Florida Statutes.

3. **REPRESENTATIONS OF COCOA.** Cocoa makes the following representations to Rockledge:

3.1 Cocoa is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Agreement.

3.2 Cocoa has the power, authority and legal right to enter into and perform the obligations set forth in this Agreement, and the execution, delivery and performance hereof by Cocoa, (i) has been duly authorized by the City Council of Cocoa; and (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of Cocoa, except as otherwise provided herein.

4. **REPRESENTATIONS OF ROCKLEDGE.** Rockledge makes the following representations to Cocoa:

4.1 Rockledge is duly organized and in good standing under the laws of the State of Florida, and is duly authorized to carry on the governmental functions and operations set forth in this Agreement.

4.2 Rockledge has the power, authority, and legal right to enter into and

perform the obligations set forth in this Agreement, and the execution, delivery and performance hereof by Rockledge (i) has been duly authorized by the City Council of Rockledge; and (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of Rockledge, except as otherwise provided herein.

5. **STATUTORY AUTHORITY.** This Agreement shall be considered an Agreement pursuant to Section 163.01, Florida Statutes. A true and correct copy of this Interlocal Agreement shall be filed with the Clerk of the Circuit Court in and for Brevard County, Florida, by Cocoa and Cocoa shall provide Rockledge a recorded copy of the Interlocal Agreement upon receipt from the Clerk of the Circuit Court.

6. **TERM; TERMINATION.** This Agreement shall be for a term of one (1) school year, commencing on the first day of the school year and terminating on the last day of the school year. This Agreement shall be renewable annually by mutual written consent of Cocoa and Rockledge. Notwithstanding, either party may terminate this Agreement with thirty (30) days written notice to the other party.

7. **DUTIES AND OBLIGATIONS OF ROCKLEDGE.**

7.1 Rockledge agrees to provide school crossing guard services at the intersection of Fiske Boulevard and Rosa L. Jones Street for the purpose of accommodating the safe travel of students traveling to and from Ronald McNair Middle School located within Rockledge on Rosa L. Jones Street.

7.2 Rockledge agrees to provide a state-certified school crossing guard and any equipment necessary for the crossing guard to carry out his or her official duties.

7.3 Rockledge shall deliver to Cocoa an itemized invoice of fees and costs incurred for any crossing guard services provided pursuant to this Agreement.

8. **DUTIES AND OBLIGATIONS OF COCOA.**

8.1 Cocoa agrees to compensate Rockledge to offset the costs directly related to Rockledge providing crossing guard services pursuant to this

Agreement. Such compensation shall not exceed Thirty Dollars ($30.00) per day such crossing guard services are provided or Five Thousand Nine Hundred Dollars ($5,900.00) per school year.

8.2 Cocoa shall make payment of any moneys due by it directly to Rockledge. Cocoa shall remit payment to Rockledge no later than thirty (30) business days after receipt of an invoice.

## 9. **MISCELLANEOUS TERMS AND CONDITIONS.**

9.1 Notices. All notices and correspondence shall be (i) hand delivered (with signed acknowledgment of receipt or affidavit of delivery), (ii) delivered by registered or certified mail, return receipt requested, or (iii) delivered by overnight carrier with signed acknowledgment of receipt. All such notices and correspondence shall be sent to the respective parties, with copies forwarded to their agents or attorneys, at the addresses set forth below or at such other addresses as the parties hereto shall designate to each other in writing.

(a) if to Cocoa:
City of Cocoa
City Manager
65 Stone Street
Cocoa, FL 32922-1750
Telephone: (321) 433-8680
Facsimile: (321) 433-8690

(b) if to Rockledge:
City of Rockledge
City Manager
1600 Huntington Lane
Rockledge, FL 32955-2660
Telephone: (321) 690-3978
Facsimile: (321) 690-3987

Any notice or demand so given, delivered or made by United States Mail, shall be deemed so given, delivered, or made three (3) days after the same is deposited in the United States mail, registered or certified, return receipt requested, addressed as above provided, with postage thereon prepaid. Any such notice, demand or document hand delivered or made by overnight carrier shall be deemed to be given, delivered or made upon delivery (or attempted delivery, if delivery is not accepted) of the same at

the address where the same is to be given, delivered, or made.

9.2 Time. Time is of the essence of this Agreement and every term and provision of this Agreement.

9.3 Severability. It is further understood and agreed that in the event any provision of this Agreement shall be adjudged, decreed, held, or ruled to be invalid, such provision or a portion thereof shall be deemed severable, and it shall not invalidate or impair the Agreement as a whole or any other provision of the Agreement.

9.4 Non-waiver. No covenant, term, condition (or breach thereof), shall be deemed waived, except by written consent of the party against whom the waiver is claimed. A waiver of any covenant, term, or condition (or breach thereof), shall not be deemed to be a waiver of any other covenant, term or condition (or breach thereof).

9.5 Captions. Captions and headings in this Agreement are for convenience only and shall not be relied upon in construing the meaning of this Agreement or any of its provisions.

9.6 Choice of Law; Venue. This Agreement has been made and entered into in the State of Florida, County of Brevard, and the laws of such state shall govern the validity and interpretation of this Agreement and the performance due hereunder. The parties agree that venue shall be exclusively in Brevard County, Florida, for all state disputes or actions which arise out of or are based upon this Agreement, and in Orlando, Florida, for all federal disputes or actions which arise out of or are based upon this Agreement.

9.7 Integration. The drafting, execution, and delivery of this Agreement by the parties has been induced by no representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless expressly referred to herein. The parties agree that they have both contributed equally to the drafting of this Agreement and this Agreement shall not be construed more favorably against the other in the event of any conflict with regards to the terms and conditions used herein.

9.8 Attorney's Fees. In the event that any party brings suit to enforce any of the provisions of this Agreement, each party agrees to bear its own costs and expenses of such action including, but not limited to, reasonable attorneys' fees, whether at settlement, trial, post judgment, or an appeal.

9.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

9.10 Liability. Each party to this Agreement shall be responsible for its own actions and omissions, and the actions and omissions of its personnel, in performing its obligations pursuant to the terms and conditions of this Agreement.

9.11 Sovereign Immunity. Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of Cocoa's or Rockledge's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on either party's potential liability under state or federal law. As such, Cocoa and Rockledge shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, Cocoa and Rockledge shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars ($200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars ($300,000.00). This paragraph shall survive termination of this Agreement.

9.12 Assignment Prohibited; Third Parties. Unless otherwise agreed in writing by Cocoa and Rockledge, this Agreement shall not be assigned in whole or in part. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Cocoa and Rockledge, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Cocoa and Rockledge and not for the benefit of any other party.

9.13 General Liability and Other Insurance. Cocoa and Rockledge shall each

maintain in force, at all times during the term of this Agreement, a general liability insurance policy.

**IN WITNESS WHEREOF,** the parties hereto have hereunto set their hands and seals this day and year first above written.

**CITY OF COCOA, FLORIDA**

By: _____
**MICHAEL C. BLAKE**
**Mayor**

**ATTEST:**

By: _____
**CARIE SHEALY**
**City Clerk**

**CITY OF ROCKLEDGE, FLORIDA**

By: _____
**THOMAS J. PRICE**
**Mayor**

**ATTEST:**

By: _____
**Jennifer LeVasseur**
**Public Relations Officer/City Clerk**

# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | 23-309 | **Version:** | 1 | **Name:** | |
| **Type:** | Contract | | | **Status:** | City Business |
| **File created:** | 5/9/2023 | | | **In control:** | City Council |
| **On agenda:** | 6/6/2023 | | | **Final action:** | |
| **Title:** | Approve, as recommended, the proposed Fiscal Year 2024 benefit renewal medical, dental, life, and disability insurance; and to authorize the City Manager to sign related agreements. | | | | |
| **Sponsors:** | Department Director | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | 041923 - Cocoa - Medical Projection - No Runout.pdf<br>051223 - Cocoa - Executive Summary 2023-2024.pdf<br>051223 - Cocoa - Renewal Evaluation 2023-2024.pdf | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|

# CITY COUNCIL AGENDA ITEM

Memo Date: May 11, 2023
Agenda Date: June 6, 2023
Prepared By: Tammy B. Gemmati, Administrative Services Director
Through: Stockton Whitten, City Manager
Requested Action:
Approve, as recommended, the proposed Fiscal Year 2024 benefit renewal medical, dental, life, and disability insurance; and to authorize the City Manager to sign related agreements.

## BACKGROUND:

The City of Cocoa currently offers group medical, dental, vision, and life insurance to its employees and retirees and their dependents (subject to eligibility guidelines). The City's medical insurance program has been administered by Cigna since 2012. The current program consists of a one in-network plan. For the Fiscal Year 2022 benefit renewal, the City's benefit broker Gehring Group released a Request for Proposal (RFP) for medical, dental, pharmacy, and Employee Assistance Program (EAP) benefit plans. Ultimately, Cigna was the lowest bid in all categories based on the City's network utilization. Also, the City transitioned back to a fully-insured medical plan at that time after being in a self-insured plan for several years. For the Fiscal Year 2023 benefit renewal, the City was facing a high increase based on claims history and the broker was able to negotiate a lower increase of 9.2%.

Medical Plan - For the Fiscal Year 2024 renewal, the initial projections based on the City's claims experience was anticipated to be a 7.1% increase. The Gehring Group worked directly with Cigna to negotiate the renewal down to a 3.9% increase overall. Here is a summary of the employee and City impact:

| Fiscal Year | City | Employee |
|---|---|---|
| FY23 | $5,541,261 | $853,002 |
| FY24 | $5,755,519 | $885,993 |
| Annual Total Increase (including retirees) | $214,258 | $32,991 |
| Per Pay Change: | EE +1: $6.87 Family: $13.48 | |

The data above includes retiree enrollment and/or budgetary impact. The City has a Medicare Advantage Plan for retirees over 65 which will be brought to Council separately for renewal. Depending on retiree status eligibility, the City either pays 100%, 50%, or 0% of medical, dental, and vision contributions for eligible retirees under age 65.

Dental Plan - Gehring Group negotiated a two-year rate guarantee with Cigna through September 30, 2025 with a 5% rate increase. This is the City's first increase in dental since 2014. The estimated annual premium based on current enrollment is $336,591, of which $272,051 is the estimated City's contributions for active employees and retirees.

The City has an Insurance Task Force (ITF) committee comprised of different departmental and union representatives with the purpose to bring forth any concerns related to the City's benefit plans and to make recommendations on the insurance plans offered by the City. The City held an ITF meeting on May 5, 2023 to review the City Manager's recommended renewal.

Employee Assistance Program (EAP) -The premium for the EAP benefit is included in the Cigna medical premium rates of $2.09 per employee per month. This totals annually to approximately $11,888 based on current enrollment.

Basic Life/Accidental Death and Dismemberment (AD&D) (City paid benefit) - The City is under a rate guarantee with Cigna through September 30, 2024. The rate premiums are based on employee salaries which are set at $.0.253 per $1,000 of coverage for Employee Life and Employee AD&D rate is $.04 per $1,000. The estimated annual cost is $84,887, which is based on the current annual employee salaries. The benefit amounts will be increased with the salaries that are in effect on October 1, 2023.

Supplemental Employee and Dependent Life Insurance (Employee paid benefit) - The City is under a rate guarantee with Cigna through September 30, 2024. The rate premium is $.254 per $1,000 of coverage for Supplemental Employee Life and Employee AD&D rate is $.04 per $1,000. The retiree life insurance will remain at $.250 per $1000. The family dependent life is $1.38 per month. The estimated annual cost for all supplemental life benefits to enrolled employees is $67,163, which is based on current enrollment and annual employee salaries. The supplemental employee life benefit amounts will be increased with the salaries that are in effect on October 1, 2023.

Short-Term Disability (STD) (Employee paid benefit) - The City is under a rate guarantee with Cigna through September 30, 2024. The rates vary by age bracket and is shown the attached renewal summary. The estimated annual cost to enrolled employees is $41,760, which is based on the

current annual employee salaries. The benefit amounts will be increased with the salaries that are in effect on October 1, 2023.

Long-Term Disability (LTD) (City paid benefit) - The City is under a rate guarantee with Cigna through September 30, 2024. The rate is $.0.359 per $100 of payroll. The annual estimate, based on current payroll is $83,222. The benefit amounts will be increased with the salaries that are in effect on October 1, 2023.

Vision Plan - Effective October 1, 2022, the City secured a rate guarantee under Cigna through September 30, 2026. The estimated annual premium based on current enrollment is $60,032, of which $50,021 is the estimated City's contributions for active and retirees.

In summary, City Staff is requesting approval as recommended the proposed Fiscal Year 2024 benefit renewal for medical, sharing the increase of 3.9% on dependent coverage, 5.0% increase with dental, and renewal for the vision, life insurance, and disability plans; and authorize the City Manager to sign related agreements, if necessary.

## STRATEGIC PLAN CONNECTION:

Containing the City's health insurance cost while maintaining the same levels of coverage helps attract and retain qualified employees long-term.

## BUDGETARY IMPACT:

Budgeted: Included in Proposed FY24 Budget in related department budgets.

| Provider | Plan (# Members) | FY2023 Annual City Cost | FY2024 Annual City Cost | Difference |
|---|---|---|---|---|
| Cigna | Medical (446) | $5,541,261 | $5,755,519 | $214,258 |
| Cigna | Dental (588) | $259,158 | $272,051 | $12,893 |
| EyeMed | Vision (587) | $50,021 | $50,021 | $0 |
| Cigna | Basic Life/AD&D | $84,887 | $84,887 | $0 |
| Cigna | Long Term Disability | $83,222 | $83,222 | $0 |
| **Total City Plan Cost:** | | **$6,018,549** | **$6,245,700** | **$227,151** |

The amounts above are estimates based on current enrollment of current employees and retirees. Benefits for vacant positions are also budgeted. This medical plan renewal includes current employees and retirees under age 65 and the Budget includes unfilled positions at the same rate. Also, the numbers above do not include the amount paid directly by employees and retirees.

The City's Medicare Advantage Plan (retirees over 65) with United Healthcare and the budget approval for the Medicare Part B reimbursements which is on a calendar year renewal, which will be presented on a separate City Council agenda item.

## PREVIOUS ACTION:

At a regular Council meeting on July 12, 2022, Council approved the proposed Fiscal Year 2023 benefit renewal for medical, dental, vision, life, and disability insurance, which included to absorb the increase for medical dependent coverage.

At a regular Council meeting on June 22, 2021, Council approved the proposed Fiscal Year 2022 benefit renewal for medical, dental, vision, life, and disability insurance, which included to absorb the increase for medical dependent coverage.

At a regular Council meeting on July 22, 2020, Council approved the proposed Fiscal Year 2021 benefit renewal for medical, dental, vision, life, and disability insurance, which included to absorb the increase for medical dependent coverage.

## RECOMMENDED MOTION:

Approve, as recommended, the proposed Fiscal Year 2024 benefit renewal medical, dental, life, and disability insurance; and to authorize the City Manager to sign related agreements.

# City of Cocoa
# Medical Insurance Renewal Projection
# Plan Effective Date: October 1, 2023

GEHRING GROUP
A RISK STRATEGIES COMPANY

**18 Months Trend - Fully Insured**

| Medical | | | | Standard Underwriting |
|---|---|---|---|---|
| 1 | Total Gross Claims (Paid Period: April 2022 to March 2023) | = | $ | 4,707,247 |
| 2 | Less Capitation Payments | + | $ | (290,714) |
| 3 | Less Pooled Claims (1 claimant exceeding $150,000) | + | $ | (437,180) |
| 4 | Net Medical Claims | = | $ | 3,979,353 |
| 5 | Maturation Factor (0.0%) | x | | 1.0000 |
| 6 | Estimated Paid Claims | = | $ | 3,979,353 |
| 7 | Trend @ 9.1% / Year Projected for 18 Months | x | | 1.1396 |
| 8 | Trended Claims | = | $ | 4,534,711 |
| 9 | Plus Capitation Payments (0.0%) | + | $ | 290,714 |
| 10 | Plus Pooled Claims (1 claimants exceeding $150,000) | + | $ | 150,000 |
| 11 | Estimated Pooling Fee | + | $ | 876,866 |
| 12 | Total Trended & Pooled Claims | = | $ | 5,852,290 |
| 13 | Average Setback Lives | / | | 452 |
| 14 | Average Paid Claims Per Employee Per Year | = | $ | 12,948 |
| 15 | Current In Force (as of March 2023) | x | | 455 |
| 16 | Adjustment for Plan Changes (0.0%) | x | | 1.0000 |
| **17** | **Expected Medical Claims** | **=** | **$** | **5,891,133** |
| 18 | Desired Loss Ratio (15% Administration) | / | | 0.8500 |
| **19** | **Projected Premium** | **=** | **$** | **6,930,744** |
| 20 | PCORI - Patient-Centered Outcomes Research Institute (Estimated $3.13 PMPY)[1] | + | $ | 2,075 |
| **21** | **Projected Premium Needed for 2023-2024 Plan Year** | **=** | **$** | **6,932,819** |
| **22** | **Current Annual Premium** | **=** | **$** | **6,471,026** |
| **23** | **Estimated Change Amount for 2023-2024 Plan Year** | **=** | **$** | **461,793** |
| **24** | **Estimated Change Percentage for 2023-2024 Plan Year** | **=** | | **7.1%** |

***This projection is for illustrative purposes only. Increased plan utilization and/or catastrophic events could affect overall plan performance.***

*[1]PCORI - Patient-Centered Outcomes Research Institute fee is based on current membership of 663*

# City of Cocoa
# Employee Benefits Executive Summary
# Effective Date: October 1, 2023

*Enrollment and Volume as of May 1, 2023*

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | | Current | | | | Renewal | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 2022-2023 | | | | 2023-2024 | | | | 2023-2024 | | |
| **MEDICAL** | | Cigna | | | | Cigna - Share Increase | | | | Per Pay (24) | | |
| **Core Plan - Active** | | **Total** | **Employer** | **ER %** | **Employee** | **Total** | **Employer** | **ER %** | **Employee** | **Employer** | **Employee** | **EE Chg Amt** |
| Employee Only | 294 | $894.32 | $894.32 | 100% | $0.00 | $928.90 | $928.90 | 100% | $0.00 | $464.45 | $0.00 | $0.00 |
| Employee + One | 60 | $1,697.98 | $1,342.76 | 79% | $355.22 | $1,763.64 | $1,394.68 | 79% | $368.96 | $697.34 | $184.48 | $6.87 |
| Employee + Family | 48 | $2,546.30 | $1,849.24 | 73% | $697.06 | $2,644.76 | $1,920.74 | 73% | $724.02 | $960.37 | $362.01 | $13.48 |
| **Annual Premium** | **402** | **$5,844,375** | **$5,187,110** | | **$657,265** | **$6,070,362** | **$5,387,675** | | **$682,687** | | | |
| **$ Increase / Decrease** | | - | - | | - | **$225,986** | **$200,565** | | **$25,422** | | | |
| **% Increase / Decrease** | | - | - | | - | **3.9%** | **3.9%** | | **3.9%** | | | |
| **Core Plan - Retiree**[1] | **0%** **50%** **100%** | **Total** | **Employer** | **ER %** | **Retiree** | **Total** | **Employer** | **ER %** | **Retiree** | **Employer** | **Retiree** [1] | **Change** |
| Employee Only | 4 8 25 | $894.32 | $894.32 | 100% | $0.00 | $928.90 | $928.90 | 100% | $0.00 | $928.90 | $0.00 | $0.00 |
| Employee + One | 0 4 2 | $1,697.98 | $894.32 | 53% | $803.66 | $1,763.64 | $928.90 | 53% | $834.74 | $928.90 | $834.74 | $31.08 |
| Employee + Family | 1 0 0 | $2,546.30 | $894.32 | 35% | $1,651.98 | $2,644.76 | $928.90 | 35% | $1,715.86 | $928.90 | $1,715.86 | $63.88 |
| **Annual Premium** | **5 12 27** | **$549,888** | **$354,151** | | **$195,738** | **$571,151** | **$367,844** | | **$203,306** | | | |
| **$ Increase / Decrease** | | - | - | | - | **$21,263** | **$13,694** | | **$7,569** | | | |
| **% Increase / Decrease** | | - | - | | - | **3.9%** | **3.9%** | | **3.9%** | | | |
| **Annual Premium** | **446** | **$6,394,264** | **$5,541,261** | | **$853,002** | **$6,641,513** | **$5,755,519** | | **$885,993** | | | |
| **$ Increase / Decrease** | | - | - | | - | **$247,249** | **$214,258** | | **$32,991** | | | |
| **% Increase / Decrease** | | - | - | | - | **3.9%** | **3.9%** | | **3.9%** | | | |

[1] *Retiree Employer / Retiree Contributions are shown as 100% contribution for display purposes. The calculated totals are based on the retiree enrollment at the 0%, 50% or 100% of the single rate. Per pay amounts are monthly.*

| **DENTAL** | | Cigna | | | | Cigna | | | | Per Pay (24) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **DPPO - Active & Retiree** | | **Total** | **Employer** | **ER %** | **Employee** | **Total** | **Employer** | **ER %** | **Employee** | **Employer** | **Employee** | **Change** |
| Employee Only | 401 | $28.02 | $28.02 | 100% | $0.00 | $29.42 | $29.42 | 100% | $0.00 | $14.71 | $0.00 | $0.00 |
| Employee + One | 99 | $70.42 | $49.22 | 70% | $21.20 | $73.92 | $51.70 | 70% | $22.22 | $25.85 | $11.11 | $0.51 |
| Employee + Family | 88 | $96.70 | $62.36 | 64% | $34.34 | $101.52 | $65.40 | 64% | $36.12 | $32.70 | $18.06 | $0.89 |
| **Annual Premium** | **588** | **$320,606** | **$259,158** | | **$61,449** | **$336,591** | **$272,051** | | **$64,540** | | | |
| **$ Increase / Decrease** | | - | - | | - | **$15,985** | **$12,893** | | **$3,091** | | | |
| **% Increase / Decrease** | | - | - | | - | **5.0%** | **5.0%** | | **5.0%** | | | |
| **Rate Guarantee** | | **Expires 09/30/2023** | | | | **Expires 9/30/2025** | | | | | | |
| **VISION** | | **EyeMed** | | | | **EyeMed** | | | | **Per Pay (24)** | | |
| **Vision - Active & Retiree** | | **Total** | **Employer** | **ER %** | **Employee** | **Total** | **Employer** | **ER %** | **Employee** | **Employer** | **Employee** | **Change** |
| Employee Only | 411 | $5.68 | $5.68 | 100% | $0.00 | $5.68 | $5.68 | 100% | $0.00 | $2.84 | $0.00 | $0.00 |
| Employee + Family | 176 | $15.16 | $10.42 | 69% | $4.74 | $15.16 | $10.42 | 69% | $4.74 | $5.21 | $2.37 | $0.00 |
| **Annual Premium** | **587** | **$60,032** | **$50,021** | | **$10,011** | **$60,032** | **$50,021** | | **$10,011** | | | |
| **$ Increase / Decrease** | | - | - | | - | **$0** | **$0** | | **$0** | | | |
| **% Increase / Decrease** | | - | - | | - | **0.0%** | **0.0%** | | **0.0%** | | | |
| **Rate Guarantee** | | **Expires 9/30/2026** | | | | **Expires 9/30/2026** | | | | | | |

**City of Cocoa**
**Employee Benefits Executive Summary**
**Effective Date: October 1, 2023**

*Enrollment and Volume as of May 1, 2023*

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | | Current | | | | Renewal | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | 2022-2023 | | | | 2023-2024 | | | | 2023-2024 |
| **LIFE/AD&D** | | New York Life | | | | New York Life | | | | |
| | | **Total** | **Employer** | **ER %** | **Employee** | **Total** | **Employer** | **ER %** | **Employee** | |
| Benefits Volume | | $41,239,350 | $24,143,200 | | $17,096,150 | $41,239,350 | $24,143,200 | | $17,096,150 | |
| Life Rate / $1,000 | | $0.507 | $0.253 | 100%/0% | $0.254 | $0.507 | $0.253 | 100%/0% | $0.254 | |
| AD&D Rate / $1,000 | | $0.080 | $0.040 | 100%/0% | $0.040 | $0.080 | $0.040 | 100%/0% | $0.040 | |
| Retiree Life | 38 | $0.250 | $0.000 | 0% | $0.250 | $0.250 | $0.000 | 0% | $0.250 | |
| Dependent Life Per Unit | 25 | $1.380 | $0.000 | 0% | $1.380 | $1.380 | $0.000 | 0% | $1.380 | |
| Spouse Life Rate | | $0.294 | $0.000 | 0% | $0.294 | $0.294 | $0.000 | 0% | $0.294 | |
| Child Life Rate | 31 | $0.184 | $0.000 | 0% | $0.184 | $0.184 | $0.000 | 0% | $0.184 | |
| **Annual Premium** | | **$152,050** | **$84,887** | | **$67,163** | **$152,050** | **$84,887** | | **$67,163** | |
| **$ Increase / Decrease** | | - | - | | - | **$0** | **$0** | | **$0** | |
| **% Increase / Decrease** | | - | - | | - | **0.0%** | **0.0%** | | **0.0%** | |
| **Rate Guarantee** | | | **Expires 9/30/2024** | | | | **Expires 9/30/2024** | | | |
| **SHORT TERM DISABILITY** | | New York Life | | | | New York Life | | | | |
| | | **Total** | **Employer** | **ER %** | **Employee** | **Total** | **Employer** | **ER %** | **Employee** | |
| STD Benefits Volume | | $96,933 | $0 | 0% | $96,933 | $96,933 | $0 | 0% | $96,933 | |
| STD Rate / $10 | | | Age Banded Rates | | | | Age Banded Rates | | | |
| **Annual Premium** | | **$41,760** | **$0** | | **$41,760** | **$41,760** | **$0** | | **$41,760** | |
| **$ Increase / Decrease** | | - | - | | - | **$0** | **$0** | | **$0** | |
| **% Increase / Decrease** | | - | - | | - | **0.0%** | **0.0%** | | **0.0%** | |
| **Rate Guarantee** | | | **Expires 9/30/2024** | | | | **Expires 9/30/2024** | | | |
| **LONG TERM DISABILITY** | | New York Life | | | | New York Life | | | | |
| | | **Total** | **Employer** | **ER %** | **Employee** | **Total** | **Employer** | **ER %** | **Employee** | |
| LTD Benefits Volume | | $1,931,806 | $1,931,806 | | $0 | $1,931,806 | $1,931,806 | | $0 | |
| LTD Rate / $100 | | $0.359 | $0.359 | 100% | $0.000 | $0.359 | $0.359 | 100% | $0.000 | |
| **Annual Premium** | | **$83,222** | **$83,222** | | **$0** | **$83,222** | **$83,222** | | **$0** | |
| **$ Increase / Decrease** | | - | - | | - | **$0** | **$0** | | **$0** | |
| **% Increase / Decrease** | | - | - | | - | **0.0%** | **0.0%** | | **0.0%** | |
| **Rate Guarantee** | | | **Expires 9/30/2024** | | | | **Expires 9/30/2024** | | | |
| **ADMIN FEES** | | P&A Group | | | | P&A Group | | | | |
| | | **Total** | **Employer** | **ER %** | **Employee** | **Total** | **Employer** | **ER %** | **Employee** | |
| FSA PEPM | 101 | $3.65 | $3.65 | 100% | $0.00 | $3.65 | $3.65 | 100% | $0.00 | |
| Retiree Billing Fee | 57 | $3.50 | $3.50 | 100% | $0.00 | $3.50 | $3.50 | 100% | $0.00 | |
| **Annual Premium** | | **$6,818** | **$6,818** | | **$0** | **$6,818** | **$6,818** | | **$0** | |
| **$ Increase / Decrease** | | - | - | | - | **$0** | **$0** | | **$0** | |
| **% Increase / Decrease** | | - | - | | - | **0.0%** | **0.0%** | | **0.0%** | |
| **Rate Guarantee** | | | **Expires 9/30/2025** | | | | **Expires 9/30/2025** | | | |
| **Total Benefits Premium** | | **Total** | **Employer** | | **Employee** | **Total** | **Employer** | | **Employee** | |
| **Annual Premium** | | **$7,058,753** | **$6,025,367** | | **$1,033,385** | **$7,321,986** | **$6,252,519** | | **$1,069,467** | |
| **$ Increase / Decrease** | | - | - | | - | **$263,234** | **$227,152** | | **$36,082** | |
| **% Increase / Decrease** | | - | - | | - | **3.7%** | **3.8%** | | **3.5%** | |

# City of Cocoa
# Medical Evaluation - Fully Insured
# Effective Date: October 1, 2023

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | | 2022-2023 | 2023-2024 |
|---|---|---|---|
| **SCHEDULE OF BENEFITS** | | **Cigna Open Access Plus** | **Cigna Open Access Plus** |
| **Calendar Year Deductible (CYD)** | | **In Network Only** | **In Network Only** |
| Single | | $2,000 | $2,000 |
| Family | | $6,000 | $6,000 |
| **Out of Pocket Max** | | Deductible, Coinsurance, Copays, and Rx | Deductible, Coinsurance, Copays, and Rx |
| Single | | $6,000 | $6,000 |
| Family | | $12,000 | $12,000 |
| Coinsurance | | 20% | 20% |
| **Office Visits** | | | |
| Primary Care Physician | | $25 | $25 |
| Specialist | | $50 | $50 |
| Preventive Services | | $0 | $0 |
| Telehealth | | $0 | $0 |
| **Non Hospital Services** | | | |
| Clinical Lab | | $0 | $0 |
| X-rays | | $0 | $0 |
| Advanced Imaging - CT, PET, MRI | | $100 | $100 |
| Urgent Care Center | | $50 | $50 |
| Outpatient Surgery in Surgical Center | | 20% after CYD | 20% after CYD |
| Physician Services in Surgical Center | | 20% after CYD | 20% after CYD |
| **Hospital Services** | | | |
| Inpatient Hospital (Per Admission) | | 20% after CYD | 20% after CYD |
| Outpatient Hospital (Per Visit) | | 20% after CYD | 20% after CYD |
| Physician Services at Hospital | | 20% after CYD | 20% after CYD |
| Emergency Room (Per Visit) | | $250 | $250 |
| **Mental Health/Substance Abuse** | | | |
| Inpatient Hospital | | 20% after CYD | 20% after CYD |
| Outpatient Services | | $0 | $0 |
| Outpatient Office Visit | | $50 | $50 |
| **Retail Pharmacy Plan** | | | |
| Tier 1 Drugs - Generic | | $20 | $20 |
| Tier 2 Drugs - Preferred | | $40 | $40 |
| Tier 3 Drugs - Non-Preferred | | $70 | $70 |
| Tier 4 Drugs - Specialty | | $20 / $40 / $70 | $20 / $40 / $70 |
| 90-Day Supply - Mail Order/Retail | | $40 / $80 / $140 | $40 / $80 / $140 |
| **Monthly Rates** | | | |
| Employee Only | 331 | $894.32 | $928.90 |
| Employee + One | 66 | $1,697.98 | $1,763.64 |
| Employee + Family | 49 | $2,546.30 | $2,644.76 |
| **Monthly Premium** | **446** | **$532,855** | **$553,459** |
| **Annual Premium** | | **$6,394,264** | **$6,641,513** |
| **$ Increase / Decrease** | | - | **$247,249** |
| **% Increase / Decrease** | | - | **3.9%** |

*Enrollment as of May 1, 2023*

# City of Cocoa
# Dental Evaluation
# Effective Date: October 1, 2023

GEHRING GROUP
A RISK STRATEGIES COMPANY

| SCHEDULE OF BENEFITS | | 2022-2023 Cigna Total DPPO | | 2023-2024 Cigna Total DPPO | |
|---|---|---|---|---|---|
| **Plan Basics** | | **In Network** | **Out of Network** | **In Network** | **Out of Network** |
| Deductible Type | | Calendar Year | | Calendar Year | |
| Class Expenses Apply to Benefit Maximum | | Class I, II, III | | Class I, II, III | |
| Benefit Maximum | | $1,500 | | $1,500 | |
| **Deductible** | | | | | |
| Single | | $25 | $25 | $25 | $25 |
| Family | | $50 | $50 | $50 | $50 |
| **Benefits** | | | | | |
| **Class I – Diagnostic & Preventive** | | | | | |
| Routine Oral Exam (2 Per Year)<br>Routine Cleanings (2 Per Year)<br>Bitewing X-rays (1 Per Year)<br>Complete X-rays (1 Set Every 3 Years) | | 100%<br>No Deductible | 100%<br>No Deductible | 100%<br>No Deductible | 100%<br>No Deductible |
| **Class II – Basic Restorative** | | | | | |
| Fillings<br>Oral Surgery<br>Simple Extractions<br>Endodontics<br>Periodontal<br>Anesthesia | | 80%<br>After Deductible | 80%<br>After Deductible | 80%<br>After Deductible | 80%<br>After Deductible |
| **Class III – Major Restorative** | | | | | |
| Crowns<br>Bridges<br>Dentures | | 50%<br>After Deductible | 50%<br>After Deductible | 50%<br>After Deductible | 50%<br>After Deductible |
| **Class IV – Orthodontia** | | | | | |
| Benefit (Children & Adult) | | 50%<br>No Deductible | 50%<br>No Deductible | 50%<br>No Deductible | 50%<br>No Deductible |
| Orthodontia Lifetime Max | | $2,000 | | $2,000 | |
| **Service Information** | | | | | |
| Out of Network Benefits Payable Level | | 80th Percentile | | 80th Percentile | |
| Waiting Period (Timely Entrant) | | None | | None | |
| Missing Tooth Provision | | Payments Reduced by 50% for 12 Months, then considered Class III expense | | Payments Reduced by 50% for 12 Months, then considered Class III expense | |
| **Rate Guarantee** | | **9/30/2023** | | **9/30/2025** | |
| **Monthly Rates** | | | | | |
| Employee Only | 401 | $28.02 | | $29.42 | |
| Employee + One | 99 | $70.42 | | $73.92 | |
| Employee + Family | 88 | $96.70 | | $101.52 | |
| **Monthly Premium** | **588** | **$26,717** | | **$28,049** | |
| **Annual Premium** | | **$320,606** | | **$336,591** | |
| **$ Increase / Decrease** | | - | | **$15,985** | |
| **% Increase / Decrease** | | - | | **5.0%** | |

*Enrollment as of May 1, 2023*

# City of Cocoa
# Vision Evaluation
# Effective Date: October 1, 2023

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | | 2022-2023 | | 2023-2024 | |
|---|---|---|---|---|---|
| **SCHEDULE OF BENEFITS** | | **EyeMed Insight Network** | | **EyeMed Insight Network** | |
| **Exams** | | **In Network** | **Out of Network** | **In Network** | **Out of Network** |
| Eye Exam | | $0 | Up to $40 | $0 | Up to $40 |
| Retinal Imaging | | Up to $39 | Not covered | Up to $39 | Not covered |
| Contact Lens Exam (Standard Fit/Follow-up) | | Up to $40 | Not Covered | Up to $40 | Not Covered |
| **Frequency** | | | | | |
| Exam | | 12 Months | | 12 Months | |
| Lenses | | 12 Months | | 12 Months | |
| Frames | | 24 Months | | 24 Months | |
| Contracts | | 12 Months | | 12 Months | |
| **Lenses** | | | | | |
| Single | | $0 | Up to $30 | $0 | Up to $30 |
| Bifocal | | $0 | Up to $50 | $0 | Up to $50 |
| Trifocal | | $0 | Up to $70 | $0 | Up to $70 |
| Lenticular | | $0 | Up to $70 | $0 | Up to $70 |
| Progressive - Standard | | $55 | Up to $52 | $55 | Up to $52 |
| Polycarbonate - Up to Age 19 | | $0 | Up to $32 | $0 | Up to $32 |
| **Frames** | | | | | |
| Retail | | Up to $150, then 20% discount | Up to $105 | Up to $150, then 20% discount | Up to $105 |
| **Contact Lenses** | | ***In lieu of eyeglass lenses and frames*** | | ***In lieu of eyeglass lenses and frames*** | |
| Contact Lenses (Conventional) | | Up to $150, then 15% discount | Up to $150 | Up to $150, then 15% discount | Up to $150 |
| Contact Lenses (Disposable) | | Up to $150 | Up to $150 | Up to $150 | Up to $150 |
| Contact Lenses (Medically Necessary) | | $0 | Up to $300 | $0 | Up to $300 |
| **Rate Guarantee** | | **Expires 9/30/2026** | | **Expires 9/30/2026** | |
| **Monthly Rates** | | **Current** | | **Renewal** | |
| Employee Only | 411 | $5.68 | | $5.68 | |
| Employee + Family | 176 | $15.16 | | $15.16 | |
| **Monthly Premium** | **587** | **$5,003** | | **$5,003** | |
| **Annual Premium** | | **$60,032** | | **$60,032** | |
| **$ Increase / Decrease** | | **-** | | **$0** | |
| **% Increase / Decrease** | | **-** | | **0.0%** | |

*Enrollment as of May 1, 2023*

**City of Cocoa**
**Employee Assistance Program Evaluation**
**Effective Date: October 1, 2023**

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | 2022-2023 | 2023-2024 |
|---|---|---|
| **EAP** | **Cigna** | **Cigna** |
| | | |
| Eligibility | Employees and their household members | Employees and their household members |
| Number of Sessions per Employee or Dependent | 5 Face-to-Face Visits per Issue | 5 Face-to-Face Visits per Issue |
| Manager / Supv Training or Employee Seminars | 5 hours of Training (combined with CIS) | 5 hours of Training (combined with CIS) |
| Frequency of Comprehensive Reporting | Quarterly | Quarterly |
| Critical Incident Debriefing | 5 hours per incident (unlimited incidents) | 5 hours per incident (unlimited incidents) |
| Management Referrals | Included | Included |
| Telephonic Management / Supervisor Consultation and Support | Included | Included |
| Counselors Available 24/7 | Included | Included |
| Work/Life Support | Online/Telephone Referrals | Online/Telephone Referrals |
| Legal/Financial Services | 30-minute Consult for each Legal / Financial Topic | 30-minute Consult for each Legal / Financial Topic |
| ID Theft Services | 60-minute Consult with Fraud Resolution Specialist | 60-minute Consult with Fraud Resolution Specialist |
| Child/Elder Care Referrals | Included | Included |
| **Monthly Rates** | **Included in Medical Premium** | **Included in Medical Premium** |
| **Rate Guarantee** | **Expires 9/30/2023** | **Expires 9/30/2024** |
| Per Employee Per Month 452 | $2.09 | $2.09 |
| **Monthly Premium** | **$945** | **$945** |
| **Annual Premium** | **$11,336** | **$11,336** |
| **$ Increase / Decrease** | - | **$0** |
| **% Increase / Decrease** | - | **0.0%** |

*No cost to the City - Cigna Provided Service*

# City of Cocoa
# Basic Life and AD&D Evaluation
# Effective Date: October 1, 2023

| | 2022-2023 | 2023-2024 |
|---|---|---|
| | **New York Life** | **New York Life** |
| **Basic Life and AD&D Benefit** | | |
| Class 1: Mayor & Council Members | All active, FT Employees classified as a Mayor or Council Member working a minimum of 30 hours per week: $50,000 | All active, FT Employees classified as a Mayor or Council Member working a minimum of 30 hours per week: $50,000 |
| Class 2: All other Full-Time Employees | All active, FT Employees working a minimum of 30 hours per week: 1 X Annual Salary to a Max of $100,000 | All active, FT Employees working a minimum of 30 hours per week: 1 X Annual Salary to a Max of $100,000 |
| Class 4: Executives | All active, FT Employees classified as an Executive working a minimum of 30 hours per week: 2 X Annual Salary to a Max of $200,000 | All active, FT Employees classified as an Executive working a minimum of 30 hours per week: 2 X Annual Salary to a Max of $200,000 |
| **Features** | | |
| Waiver of Premium | Disabled Prior to Age 60<br>Up to 12 Months | Disabled Prior to Age 60<br>Up to 12 Months |
| Conversion Privileges | Available | Available |
| Accelerated Benefit | 75% to Plan Maximum | 75% to Plan Maximum |
| Age Reduction Schedule | 65% at age 65<br>50% at age 70<br>35% at age 75 | 65% at age 65<br>50% at age 70<br>35% at age 75 |
| **Rate Guarantee** | **Expires 9/30/2024** | **Expires 9/30/2024** |
| **Monthly Rates** | | |
| Estimated Volume | $24,143,200 | $24,143,200 |
| Employee Life Rate / $1,000 | $0.253 | $0.253 |
| Employee AD&D Rate / $1,000 | $0.040 | $0.040 |
| **Monthly Premium** | **$7,073.96** | **$7,073.96** |
| **Annual Premium** | **$84,887** | **$84,887** |
| **$ Increase / Decrease** | - | **$0** |
| **% Increase / Decrease** | - | **0.0%** |

# City of Cocoa
# Supplemental Life and AD&D Evaluation
# Effective Date: October 1, 2023

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | | 2022-2023 | 2023-2024 |
|---|---|---|---|
| | | **New York Life** | **New York Life** |
| **Supplemental Employee Life / AD&D Benefit** | | | |
| Class 2: All Other Full-Time Employees | | All active, FT Employees working a minimum of 30 hours per week: Up to 3X Salary, not to exceed $300,000 | All active, FT Employees working a minimum of 30 hours per week: Up to 3X Salary, not to exceed $300,000 |
| Class 3: Retirees | | All former Employees who retire from the Employer: $10,000 | All former Employees who retire from the Employer: $10,000 |
| Class 4: Executives | | All active, FT Employees classified as an Executive working a minimum of 30 hours per week: Up to 3X Salary, not to exceed $300,000 | All active, FT Employees classified as an Executive working a minimum of 30 hours per week: Up to 3X Salary, not to exceed $300,000 |
| **Supplemental Dependent Life / AD&D Benefit** | | | |
| Spouse Benefit (to Age 70) | | Units of $10,000 up to $50,000, not to exceed 50% of Employee Amount | Units of $10,000 up to $50,000, not to exceed 50% of Employee Amount |
| Child(ren) Benefit (to age 19 / 23 if FT student) | | $10,000<br>$500 (birth to 6 months) | $10,000<br>$500 (birth to 6 months) |
| Family Benefit | | Spouse/Child(ren): $5,000 | Spouse/Child(ren): $5,000 |
| **Guaranteed Issue** | | | |
| Class 2 & Class 4 | | $250,000 (combined with Basic Life) | $250,000 (combined with Basic Life) |
| Class 3 | | $10,000 | $10,000 |
| Spouse | | $30,000 | $30,000 |
| Child(ren) | | $10,000 | $10,000 |
| **Rate Guarantee** | | **Expires 9/30/2024** | **Expires 9/30/2024** |
| **Monthly Rates - Employee/Retiree** | | | |
| Employee Life Volume | | $17,096,150 | $17,096,150 |
| Employee Life Rate / $1,000 | | $0.254 | $0.254 |
| Employee AD&D Rate / $1,000 | | $0.040 | $0.040 |
| Retiree Life Rate / $1,000 | 38 | $0.250 | $0.250 |
| **Monthly Premium** | | **$5,121** | **$5,121** |
| **Annual Premium** | | **$61,455** | **$61,455** |
| **$ Increase / Decrease** | | - | **$0** |
| **% Increase / Decrease** | | - | **0.0%** |
| **Monthly Rates - Dependent Life** | | | |
| Spouse Life Volume | | $1,150,000 | $1,150,000 |
| Spouse Life Rate / $1,000 | | $0.294 | $0.294 |
| Spouse AD&D Rate / $1,000 | | $0.040 | $0.040 |
| Child(ren) Life Rate | 31 | $0.184 | $0.184 |
| Family Dependent Life Per Unit | 25 | $1.380 | $1.380 |
| **Monthly Premium** | | **$476** | **$476** |
| **Annual Premium** | | **$5,708** | **$5,708** |
| **$ Increase / Decrease** | | - | **$0** |
| **% Increase / Decrease** | | - | **0.0%** |
| **Monthly Premium** | | **$5,597** | **$5,597** |
| **Annual Premium** | | **$67,163** | **$67,163** |
| **$ Increase / Decrease** | | - | **$0** |
| **% Increase / Decrease** | | - | **0.0%** |

# City of Cocoa
# Voluntary Short Term Disability Evaluation
# Effective Date: October 1, 2023

| | 2022-2023 | | 2023-2024 | |
|---|---|---|---|---|
| | **New York Life** | | **New York Life** | |
| **Short Term Disability** | | | | |
| Eligibility | All Active Employees<br>Working 30 + hours Per Week | | All Active Employees<br>Working 30 + hours Per Week | |
| Benefit | 60% | | 60% | |
| Maximum Weekly Benefit | $1,000 | | $1,000 | |
| Elimination Period for Accident | 0 Days | | 0 Days | |
| Elimination Period for Sickness | 7 Days | | 7 Days | |
| Benefit Duration | 13 Weeks | | 13 Weeks | |
| **Rate Guarantee** | **Expires 9/30/2024** | | **Expires 9/30/2024** | |
| **Monthly Rates** | **Age Bracket** | **Rate / $10** | **Age Bracket** | **Rate / $10** |
| Rates per $10 of Weekly Benefit | Under 25 | $0.276 | Under 25 | $0.276 |
| | 25-29 | $0.276 | 25-29 | $0.276 |
| | 30-34 | $0.276 | 30-34 | $0.276 |
| | 35-39 | $0.276 | 35-39 | $0.276 |
| | 40-44 | $0.276 | 40-44 | $0.276 |
| | 45-49 | $0.322 | 45-49 | $0.322 |
| | 50-54 | $0.368 | 50-54 | $0.368 |
| | 55-59 | $0.488 | 55-59 | $0.488 |
| | 60-64 | $0.598 | 60-64 | $0.598 |
| | 65-69 | $0.681 | 65-69 | $0.681 |
| | 70-74 | $0.745 | 70-74 | $0.745 |
| | 75-99 | $0.809 | 75-99 | $0.809 |
| Estimate Volume | $96,933 | | $96,933 | |
| **Monthly Premium** | **$3,480** | | **$3,480** | |
| **Annual Premium** | **$41,760** | | **$41,760** | |
| **$ Increase / Decrease** | **-** | | **$0** | |
| **% Increase / Decrease** | **-** | | **0.0%** | |

**City of Cocoa**
**Long Term Disability Evaluation**
**Effective Date: October 1, 2023**

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | 2022-2023 | 2023-2024 |
|---|---|---|
| | **New York Life** | **New York Life** |
| **Long Term Disability** | | |
| Eligibility | All Active Employees<br>Working 30 + hours per week | All Active Employees<br>Working 30 + hours per week |
| Benefit | 60% | 60% |
| Maximum Monthly Benefit | $6,000 | $6,000 |
| Elimination Period | 90 Days | 90 Days |
| Own Occupation Period | 24 months | 24 months |
| Duration of Benefit | To age 65 or the date of the<br>42nd monthly benefit is payable, if later | To age 65 or the date of the<br>42nd monthly benefit is payable, if later |
| Pre-existing Condition | 3 / 12 | 3 / 12 |
| Mental Illness, Alcoholism & Drug Abuse Limitation | 24 months | 24 months |
| **Rate Guarantee Period** | **Expires 9/30/2024** | **Expires 9/30/2024** |
| **Monthly Rates** | | |
| Estimated Volume | $1,931,806 | $1,931,806 |
| LTD Rate / $100 Covered Payroll | $0.359 | $0.359 |
| **Monthly Premium** | **$6,935** | **$6,935** |
| **Annual Premium** | **$83,222** | **$83,222** |
| **$ Increase / Decrease** | **-** | **$0** |
| **% Increase / Decrease** | **-** | **0.0%** |

# City of Cocoa
# Flexible Spending Account Evaluation
# Effective Date: October 1, 2023

| | | 2022-2023 | 2023-2024 |
|---|---|---|---|
| | | **P&A Group** | **P&A Group** |
| **Administration** | | | |
| One Time Setup Fee | | $0 | $0 |
| Annual Renewal Fee | | $0 | $0 |
| Debit Card Fee | | Included | Included |
| Debit Card Setup Fee | | Included | Included |
| Reimbursements Frequency | | Daily Processing | Daily Processing |
| Paper Confirmation Statements | | Electronic Only | Electronic Only |
| Direct Deposit Setup | | Included | Included |
| Online Enrollment Meetings | | Included | Included |
| Web Administration | | Included | Included |
| Enrollment Kits | | Electronic/Paper | Electronic/Paper |
| Custom Reporting | | Included | Included |
| **Monthly Rates** | | | |
| Per Employee Per Month | 101 | $3.65 | $3.65 |
| **Rate Guarantee** | | **9/30/2025** | **9/30/2025** |
| **Monthly Premium** | | **$369** | **$369** |
| **Annual Premium** | | **$4,424** | **$4,424** |
| **$ Increase / $ Decrease** | | **-** | **$0** |
| **% Increase / % Decrease** | | **-** | **0.0%** |

# City of Cocoa
# COBRA & Retiree Billing Evaluation
# Effective Date: October 1, 2023

GEHRING GROUP
A RISK STRATEGIES COMPANY

| | | 2023-2024 |
|---|---|---|
| **COBRA/Retiree Billing Administration** | | **P&A Group** |
| **Plan Basics** | | |
| Dedicated Account Manager | | Yes |
| Electronic Eligibility File Fees | | Included |
| Web Administration | | Included |
| Liability - Indemnify/Hold Client Harmless | | Included |
| **Notice Fees[1]** | | **Per Notice Billing** |
| Initial Notice to New Hires Fee | 50 | $10.00 |
| Initial Notice to ALL Employees Fee | | $3.25 |
| Qualifying Event Per Notice Fee | 50 | $20.00 |
| Monthly Invoice - Retirees PRPM | | $0.00 |
| **Implementation/Renewal Fees** | | |
| Cost per Printed OE Kits | | $0.00 |
| Implementation Fee/Set Up Fee | | $0.00 |
| Renewal Fee | | $0.00 |
| Takeover Fee - Per Member (One-time) | | $0.00 |
| **Monthly Rates** | | |
| COBRA Fee - Per Employee Per Month | 1 | Per Event Notice |
| Retiree Fee - Per Retiree Per Month | 57 | $3.50 |
| Monthly Premium Minimum (if applies) | | $0 |
| **Rate Guarantee** | | **9/30/2025** |
| **Monthly Premium - COBRA (Estimated)** | | **$125** |
| **Monthly Premium - Retiree** | | **$200** |
| **Annual Premium** | | **$3,894** |
| **$ Increase / $ Decrease** | | - |
| **% Increase / % Decrease** | | - |

[1]*Estimated number of new hires, terminations and other qualifying events; fluctuation in status changes may increase or decrease the annual estimates.*